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Supreme Court of the United States

OCTOBER TERM, 1954

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA,
APPELLANT,

vs.

PANOMA CORPORATION AND THE CORPORATION
COMMISSION OF THE STATE OF OKLAHOMA

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED JULY 6, 1954
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SUPREME COURT OF THE UNITED STATES

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INDEX

	Original	Print
Proceedings in the Supreme Court of the State of Oklahoma	1	1
Petition in error	1	1
Record of testimony and proceedings before the Corporation Commission of the State of Oklahoma	2	10
Appearances	5	10
Application of the Panoma Corporation	7	11
Order setting cause for hearing	11	12
Notice of hearing	14	13
Order continuing cause	18	14
Application of Natural Gas Pipeline Company of America	21	15
Response of Natural Gas Pipeline Company of America	25	16
Transcript of testimony	37	23
Appearances	37	23
Offers in evidence	38	23

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—8832

	Original	Print
Record of testimony and proceedings before the Corporation Commission of the State of Oklahoma—Continued		
Transcript of testimony—Continued		
Testimony of Don Harrington	39	24
R. D. Palmer (omitted per stipulation)	87	
Hughes Seawald (omitted per stipulation)	89	
Leon L. Hoyt	91	52
W. F. Matheny	103	59
T. MacDonald Biddison	117	67
Report of the Commission	143	81
Notice of appeal and request for preparation of record, etc.	154	87
Application for supersedeas bond	157	88
Note re bond	158	89
Order fixing supersedeas bond	160	89
Supersedeas bond	164	91
Exhibits 1 to 6 (omitted per stipulation)	173	
Note re exhibit 7	184	95
Exhibit 8—Revised Receivable—Natural Gas Pipe Line Company under Oklahoma Corporation Commission Price Orders	185	96
Exhibit 9—Gas Purchase Contract between Natural Gas Pipe Line Company of America and Harrington & Marsh, dated as of December 1, 1946	186	98
Exhibit 10—Photograph	211	126
Exhibit 11—Sketch showing relationship of Natural's Station No. 1 and Panoma's Hooker Plant	212	126
Exhibit 12—Report of the Corporation Commission of Oklahoma in the case of Peerless Oil and Gas Company v. Cities Service Gas Co., et al. (December 9, 1946)	213	127
Exhibit 13—(Omitted per stipulation)	227	
Exhibit 14—Condensed analysis of actual and projected earnings of Panoma Corporation—Oklahoma Operations—from October 1, 1948 to December 31, 1950, inclusive	233	135
Exhibit 15—Report of Corporation Commission of Oklahoma in the case of Peerless Oil and Gas Co. v. Cities Service Co., et al. (February 4, 1947)	240	139
Exhibit 16—Statistics re Panoma Corporation—Cost of service, gathering and treating year 1941—Estimate of Investment for earnings analysis, 1948, 1949, 1950—Estimate of Working capital—Estimate of depreciation reserve accrual and revenue requirement, 1948, 1949, 1950	247	145
Chairman's certificate (omitted in printing)	251	
Opinon, Welch, J.	253	149
Dissenting opinion, Halley, C. J.	266	164

	Original	Print
Petition for rehearing and supporting brief	273	169
Order denying petition for rehearing	279	173
Order denying leave to file second rehearing	280	173
Petition for appeal	281	174
Order allowing appeal	282	174
Bond on appeal (omitted in printing)	351	
Citation (omitted in printing)	353	
Assignment of errors and prayer for reversal	354	176
Application for stay of enforcement of opinion and judgment	359	179
Order staying enforcement of order, opinion and judgment	361	180
Praecipe	375	181
Clerk's certificate (omitted in printing)	378	
Order noting probable jurisdiction	379	183

[fol. 1] [File endorsement omitted]

IN THE SUPREME COURT OF STATE OF OKLAHOMA

No. 35203

NATURAL GAS PIPE LINE COMPANY OF AMERICA, Plaintiff in Error,

v.

PANOMA CORPORATION and THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Defendants in Error

(In the Matter of the Application of Panoma Corporation for a Clarification of Order No. 19514 and for an Order of this Commission Directing the Action to be taken by Applicant and Natural Gas Pipe Line Company of America under and Pursuant to said Order—Cause CD No. 3048, Before the Corporation Commission of the State of Oklahoma.)

PETITION IN ERROR—Filed July 11, 1951

Comes now Natural Gas Pipe Line Company of America, (respondent below) hereinafter referred to as Natural, Plaintiff in Error, and complaining of Panoma Corporation (applicant below) hereinafter referred to as Panoma, and the Corporation Commission of the State of Oklahoma (hereinafter referred to as the Commission), Defendants in Error, shows that on the 17th day of May, [fol. 2] 1951, the Commission, in a proceeding designated as Cause CD No. 3048, made and entered an order, being No. 24,745, in which Natural was granted 20 days to pay the difference between the amount which it had paid to Panoma for residue gas under the terms of a gas purchase contract and an amount computed by multiplying the volume of gas, the custody of which was delivered to Natural by Panoma for compression, by 7 cents per thousand cubic feet. By said order Panoma was directed, upon the failure of Natural to make such payment within 20 days, to forthwith cease delivering gas to Natural under said contract. Said order further provided

that Natural, by paying to Panoma 6 cents per thousand cubic feet for residue gas delivered to Natural under said contract, did not comply with Order No. 19,514 of the Commission. Natural was further ordered to pay to Panoma 7 cents per thousand cubic feet measured at a pressure base of 14.65 pounds absolute per square inch for the gas delivered to Natural's compressor station. This portion of the order assumes and infers that such delivery constituted a disposition of such gas by Panoma to Natural. Such assumption and inference is contrary to the undisputed evidence which shows that (a) such delivery was a temporary delivery only of custody of such gas; (b) title to the gas remains in Panoma during the brief period of such custody; and (c) the natural gas so [fol. 3] delivered into the brief custody of Natural (for compression purposes only) was different, both as to quantity and quality, from the residue gas which was and is later metered, sold and delivered by Panoma to Natural.

Thereafter and within the time allowed by law, Natural gave notice of appeal from said order, superseded the same, and now files herewith a complete transcript of the record of the proceedings had before the Commission and of the evidence upon which Order No. 24,745 was based, including a copy of said order, which said transcript is hereto attached, marked Exhibit "A", and made a part of this petition in error.

Natural, which is not a producer of natural gas in Oklahoma, and purchases no natural gas (gas as produced from the wells) in Oklahoma, its only activity in said state being the purchase from Panoma of substantial quantities of residue gas (being a portion of the constituents of the natural gas produced by Panoma from its wells) and the transportation thereof through and from the State of Oklahoma in interstate commerce, alleges that there is error in said proceedings, order and judgment in this, to-wit:

1

The Commission was without power or jurisdiction to make and enter the order complained of.

2

Order No. 24,745 is contrary to law.

[fol. 4] 3

Order No. 24,745 is contrary to the evidence, and is not sustained by substantial evidence.

4

The evidence conclusively shows that neither Panoma nor Natural, in carrying out the provisions of a contract between them, has violated the Commissions' Order No. 19,514 entered in Cause CD No. 1054 alone or as said order was construed and interpreted by the Commission in Order No. 19,702 entered in Cause CD No. 1054. The contrary findings by the Commission are inadequate in law and insufficient upon which to base such order.

5

Order No. 24,745 unreasonably discriminates against Natural by applying to it a rule different than that announced in Order No. 19,514.

6

Order No. 24,745 is void and beyond the power of the Commission in that it is an attempt, under the guise of enforcing prior orders, to alter and change in this case its prior legislative Order No. 19,514 alone or as construed by Order No. 19,702 without new legislative process.

7

Order No. 24,745 unreasonably discriminates against Natural by applying to it a rule different than that an-
[fol. 5] nounced in Order No. 19,702, and at the same time affirming and adhering to said rule as a correct interpretation of Order No. 19,514.

8

Order No. 24,745 is in conflict with the terms and meaning of Order No. 19,514 as construed and interpreted by Order No. 19,702 (issued in the same proceeding in which

Order No. 19,514 was issued) in that (a) in Order No. 19,702 it was held that a sale by Phillips to Panhandle Eastern Pipe Line Company of residue gas at 4.67 cents per M.C.F. (measured at 16.4 pounds, which is equivalent to 4.17 cents per M.C.F. when measured at 14.65 pounds) was not in violation of the terms and meaning of Order No. 19,514. In the instant case it is held that a purchase by Natural from Panoma of residue gas at 5.12 cents per M.C.F. (a realization of 22 per cent in excess of the price paid by Panhandle Eastern to Phillips) was a violation of such order. (b) In Order No. 19,702 it was held that Phillips, by selling its residue gas at 4.67 cents per M.C.F. and its extracted liquids for a sum not to exceed 3.15 cents per M.C.F., thus realizing a total of 6.9855 cents per M.C.F. measured at 14.65 pounds, was realizing from the sale and utilization of the constituents of the gas produced by it approximately the equivalent of 7 cents per M.C.F., and that therefore Phillips was complying with Order No. 19,514 as therein construed and interpreted. In [fol. 6] the instant case it is held that Panoma, though selling its residue gas to Natural at 5.12 cents per M.C.F. (measured at 14.65 pounds) and its extracted liquids for 4.181 cents per M.C.F., thus realizing from such constituents 9.301 cents per M.C.F. (a realization of 33 per cent in excess of that of Phillips) is not complying with the terms and meaning of Order No. 19,514.

9

Order No. 24,745, in so far as it directs Natural to pay to Panoma 7 cents per M.C.F. for the gas delivered into Natural's custody at Natural's compressor plant, is arbitrary, unreasonable and void in that (a) thereby Natural is required to pay for portions of the gas over which it does not obtain dominion, title or power of disposition, namely, the extractable liquid hydrocarbons which are extracted from such gas after it is redelivered to Panoma and are sold by Panoma for large sums of money; (b) its effect is to enable Panoma to collect twice for the extractable liquid hydrocarbons contained in the natural gas, once from Natural through the requirement that Natural pay the full value of the natural gas which is

delivered into its custody at its compressor station, and again from those purchasers to whom Panoma sells such extracted liquid hydrocarbons.

10

Order No. 24,745 violates the Fourteenth Amendment to the Constitution of the United States in that it denies to Natural equal protection of the law.

[fol. 7] 11

Order No. 24,745 impairs the obligations of the contract between Panoma and Natural in violation of Section 10, Article 1 of the Constitution of the United States and Section 15, Article 2 of the Constitution of the State of Oklahoma.

12

Order No. 24,745 deprives Natural of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States and of Section 7, Article 2 of the Constitution of the State of Oklahoma.

13

Order No. 24,745, *by* directed Natural to pay to Panoma for residue gas (a lawful article of commerce) the price fixed for natural gas from which no constituents have been extracted, amounts to regulation of and the imposition of a burden upon interstate commerce, in violation of Section 8, Article 1 of the Constitution of the United States.

14

Order No. 24,745 constitutes an attempt on the part of the Commission, by the imposition of sanctions, (the payment by Natural to Panoma of $1,334,960.50) to exercise judicial power and jurisdiction not conferred on the Commission by any constitutional or statutory provision or by necessary implication.

[fol. 8] 15

Order No. 24,745 constitutes an unwarranted invasion of the corporate affairs of both Panoma and Natural, and amounts to the substitution of the judgment of the Commission for that of the officers and directors of said corporations without authority of law.

16

Order No. 24,745 is an attempt by the Corporation Commission, under the guise of regulation by virtue of the police power, to unreasonably interfere with the contract rights of the parties, despite the fact that they have no tendency to injure the public health, morals, safety, or general welfare.

17

The Corporation Commission has no power to specify the methods or means by which a producer of gas in the affected area obtains the minimum price fixed by Order No. 19,514, particularly in view of the interpretation and construction thereof by said Commission in Order No. 19,702.

18

The application filed before the Commission by Panoma was insufficient to sustain the order complained of, and the Commission therefore erred in refusing to dismiss the same.

19

Order No. 19,514 operates solely upon the producers of gas in the affected area, and neither said order nor any constitutional or statutory provision authorizes the Cor- [fol. 9] poration Commission to render a judgment for the payment of money (by the imposition of sanctions, or otherwise) and the attempt of the Commission, by the order complained of, to force the payment of money by Natural to Panoma is clearly beyond the power and jurisdiction of the Commission.

20

Order No. 24,745, in so far as it requires Natural, as a condition to the further delivery of gas to it by Panoma,

to pay to Panoma a sum amounting to $1,.34,960.50 is arbitrary and void, for the reason that the Commission has no power to punish Natural for any prior production of gas by Panoma in alleged violation of orders of the Commission, and for the further reason that any claim by Panoma against Natural for any sums allegedly due because of any transaction between the parties prior to the date of said order, or because of any alleged prior violation by Panoma of an order of the Commission, should be asserted only in a court of competent jurisdiction, where Natural can present defenses of accord and satisfaction, estoppel and other appropriate legal and equitable defenses.

21

The contract between the parties provides that the price therein specified for residue gas shall adjust to valid regulations. Consequently, the contract itself affords an adequate remedy at law as to purchases made by Natural, both prior and subsequent to the date of Order No. 24,745. The [fol. 10] attempt by the Commission to deprive Natural of its "day in Court" is therefore wholly void and beyond the power of the Commission.

22

Order No. 24,745, under the guise of interpretation, constitutes a complete departure from the Commission's prior legislative Orders No. 19,514 and 19,702, and in so far as it attempts to impose penalties and sanctions upon Natural in an effort to force an adjustment retroactively is void because violative of Section 15 of Article 2 of the Constitution of the State of Oklahoma forbidding any ex post facto law.

23

There is no evidence which shows, nor has the Commission found, that by requiring Natural to pay more for residue gas purchased by it than is paid by other purchasers of residue gas derived from Natural gas produced in the Guymon-Hugoton Field waste will be prevented nor will corelative rights be accommodated or protested.

Wherefore, Natural prays that Order No. 24,745 of the Corporation Commission be reversed, set aside and held for naught, and that Natural be restored to all the rights and privileges it has lost by the rendition and entry of such order, and that it have such other and further relief to which it is entitled.

Warren Spies, D. H. Culton, Monnet, Hayes and Bullis, By Coleman Hayes, Attorneys for Plaintiff in Error.

[fol. 11] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

Notice of Filing of Petition in Error

To: Mac Q. Williamson, Attorney General of the State of Oklahoma.

T. Murray Robinson, Attorney for Panoma Corporation.
Kent Shartel, Attorney for Panoma Corporation.
Floyd Green, Conservation Attorney for the Corporation Commission of Oklahoma.

[fol. 12] You, and each of you, will take notice that on the 11th day of July, 1951, Natural Gas Pipe Line Company of America will file in the Supreme Court of the State of Oklahoma Petition in Error, a copy of which is herewith enclosed, together with the original certified transcript of the record of proceedings before the Corporation Commission.

Natural Gas Pipe Line Company of America, by Coleman Hayes, one of its attorneys.

[fol. 13] AFFIDAVIT OF MAILING

STATE OF OKLAHOMA,
Oklahoma County, ss:

Coleman Hayes, of lawful age, being first duly sworn, says: That he is one of the attorneys for Natural Gas Pipe Line Company of America, named as plaintiff in error in the attached Petition in Error; that on the 11th day of July, 1951, he mailed a copy of said Petition in Error, together with a notice of the filing thereof, to each of the following:

Mac Q. Williamson, Attorney General of the State of Oklahoma
T. Murray Robinson, Attorney for Panoma Corporation
Kent Shartel, Attorney for Panoma Corporation
Floyd Green, Conservation Attorney for the Corporation Commission of Oklahoma.

with postage prepaid, addressed to the persons so named at their correct place of address, said persons being the attorneys of record before the Corporation Commission and of all the parties who appeared before said Commission and entitled to a copy of said Petition in error and to notice of the filing thereof.

Further affiant saith not.

Coleman Hayes.

Subscribed and sworn to before me this 11 day of July, 1951.

Mary J. Duckett, Notary Public. My Commission Expires: March 25, 1953. (Seal)

[fols. 1-4] Proceedings Before the Corporation Commission of the State of Oklahoma

Cause CD No. 3048

In the Matter of the Application of Panoma Corporation for a Clarification of Order No. 19514 and for an Order of This Commission Directing the Action to Be Taken by Applicant and Natural Gas Pipeline Company of America Under and Pursuant to Said Order.

Record of Testimony and Proceedings Had on Appeal to the Supreme Court of the State of Oklahoma

Reporters: Rita F. Moore and J. L. King.

[fols. 5-6] Before the Corporation Commission of the State of Oklahoma

Cause CD No. 3048

In the Matter of the Application of Panoma Corporation for a Clarification of Order No. 19514 and for an Order of This Commission Directing the Action to Be Taken by Applicant and Natural Gas Pipeline Company of America Under and Pursuant to Said Order.

Appearances:

The Applicant appeared by T. Murray Robinson, and Wallace H. Robertson.

The Natural Gas Pipe Line Company of America appeared by Coleman Hayes, D. H. Culton, and Warren Spies.

The Corporation Commission appeared by Floyd H. Green.

[fol. 7] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

APPLICATION—Filed January 30, 1951

Comes now the applicant and alleges:

1. That it is the owner of oil and gas leases within the Guymon-Hugoton field in Texas County, Oklahoma, on which it has drilled a number of wells, through which it is producing gas from the common source of supply covered by the Commission's Order No. 19514, fixing a field price therefore, and as a producer, collects and gathers gas from its leases and wells in said field, and sells and delivers said gas to Natural Gas Pipeline Company of America in said field in Texas County, Oklahoma.

2. That under the terms of said order, all gas produced from said field shall be sold at a price of not less than seven cents per thousand cubic feet, metered at 14.65 absolute pressure per square inch; that said Order is applicable to all of said gas produced, sold and [fol. 8] delivered by Applicant as aforesaid.

3. That the Natural Gas Pipeline Company of America, since the effective date of said Order, entered on the 9th day of December, 1946, has continued to purchase gas from applicant and has paid therefor a sum less than the price fixed by the Commission's Order.

4. That applicant has made demand on the Natural Gas Pipeline Company of America to pay the purchase price provided by said Order, and notwithstanding the fact that said Order is applicable to said gas, it has refused to do so.

5. That applicant herein does not desire to continue to deliver gas in violation of said order and, therefore, requests that this Commission determine; first, whether or not its deliveries are a violation of said order; and second, whether or not it should discontinue such deliveries if such deliveries are in violation of said order.

Wherefore, applicant prays:

1. That a day be assigned for hearing this application;
2. That notice thereof be given as required by law;

3. That, upon said hearing, the Commission determine [fols. 9-10] the issues herein presented and issue an appropriate order in respect thereto.

Dated January 29, 1951.

Robinson, Shipp, Robertson & Barnes, by (S.) T. Murray Robinson, Attorneys for Applicant.

[File endorsement omitted.]

[fol. 11] Before the Corporation Commission of the State of Oklahoma

[Title omitted]

Order Setting Cause for Hearing—January 30, 1951

Now, on this the 30th day of January, 1951, the Corporation Commission of Oklahoma being in executive session, there comes on for consideration the above styled and numbered application.

It appears that this is a matter that should be set for hearing as soon as possible and that February 14th 1951 is the first available date on the calendar.

Order

It is therefore order- that this cause be and the same is hereby set for hearing in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma, on the 14th day of February, 1951, at 10 o'clock a.m., and that notice thereof be published as required by law.

[fols. 12-13] Done and performed this 30th day of January, 1951.

Corporation Commission of Oklahoma, (S.) Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Ray C. Jones, Commissioner.

Attest: (JB) (S.) Tom McMurray, Secretary (Seal).

[File endorsement omitted.]

[fol. 14] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

NOTICE OF HEARING—January 30, 1951

To Natural Gas Pipeline Company of America, a Delaware Corporation, and to all operators, purchasers and takers of gas, and all other interested parties, particularly in the Guymon-Hugoton Field, Texas County, Oklahoma.

Notice is hereby given that the Corporation Commission of Oklahoma will hold a hearing in its Court Room, Capitol Office Building, Oklahoma City, Oklahoma, on the 14th day of February, 1951, at 10:00 o'clock A.M., upon the application of the Panoma Corporation, a Delaware corporation, filed in this cause on the 30th day of January, 1951.

Notice is further given that the applicant, Panoma Corporation, requests the Corporation Commission to determine whether its Order No. 19514, fixing a price applicable to deliveries by producers to purchasers of gas [fol. 15] produced from the Guymon-Hugoton field, applies to the gas deliveries which Panoma Corporation has been making to the Natural Gas Pipeline Company of America, and if so, whether or not Natural Gas Pipeline Company of America's failure to pay the prescribed price to Panoma Corporation makes the deliveries of gas in violation of said order.

Notice is further given that applicant further requests the Commission to determine whether or not its deliveries of gas to Natural Gas Pipeline Company of America should continue if such deliveries are in violation of the order and that applicant has prayed that the Commission determine the issues presented by its application and issue an appropriate order in respect thereto.

All persons interested in such matters may appear on said date and be heard.

Done and performed this 30th day of January, 1951.

Corporation Commission of Oklahoma, by (S.) Reford Bond, Chairman; Ray O. Weems, Vice-Chairman, Ray C. Jones, Commissioner.

Attest: (JB) (S.) Tom McMurray, Secretary (Seal).

[fols. 16-17] [File endorsement omitted]

[fol. 18] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER CONTINUING CAUSE—February 15, 1951

This cause came on for hearing before the Corporation Commission of Oklahoma on the 14th day of February, 1951, at 10 o'clock a.m., in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Reford Bond, Chairman Ray O. Weems, Vice-Chairman and Ray C. Jones, Commissioners, sitting.

When the case was called, it was announced by T. Murray Robinson, attorney for the applicant, that the cause might be continued until April 5th and 6th, 1951, at 10 o'clock a.m. by agreement of counsel.

Order

It is therefore ordered by the Corporation Commission that the above styled cause be and the same is hereby continued until April 5th and 6th, 1951.

[fols. 19-20] Done and performed this 15th day of February, 1951.

Corporation Commission of Oklahoma, (S.) Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Ray C. Jones, Commissioner.

[File endorsement omitted.]

[fol. 21] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

APPLICATION OF NATURAL GAS PIPELINE COMPANY OF AMERICA—Filed March 13, 1951

Comes now Natural Gas Pipeline Company of America, hereinafter referred to as Natural, and shows to the Commission:

1

That Natural is interested in the above proceeding, as will appear from the original application filed herein by Panoma Corporation.

2

That this matter is set for hearing before the Commission on April 5, 1951, and at said hearing Natural wishes to offer evidence to establish the fact that Panoma Corporation realizes from the unitization and sale of natural gas produced by it in the Guymon-Hugoton Field a price which equals or exceeds the minimum price heretofore set by the Commission.

[fol. 22]

3

To the best of Natural's information and belief, the books and records of Panoma Corporation are kept at Amarillo, Texas.

4

An examination and audit of the books and records of Panoma Corporation is necessary in order to determine whether Panoma Corporation is realizing from the utilization and sale of natural gas produced by it in said field a price which equals or exceeds the minimum price fixed by this Commission.

Wherefore, Natural prays,

(1) That a day be assigned for hearing this application;

(2) That upon a hearing hereof the Commission designate a qualified accountant, preferably one employed by the Commission, and direct such accountant to immedi-

ately examine and audit the accounts and records of Panoma Corporation for the purpose of determining whether Panoma Corporation realizes from the utilization and sale of natural gas produced by it in said field a price which equals or exceeds the minimum price fixed by this [fols. 23-24] Commission; or

(3) That the Commission make and enter an order herein authorizing Natural to take the depositions of persons having the care and custody of the accounts and records of Panoma Corporation for the purpose specified in the last preceding paragraph.

Dated March 13, 1951.

S. A. L. Morgan, Warren Spies, D. H. Culton, Monnet, Hayes, Brown & Bullis, by (S.) Coleman Hayes, Attorneys for Natural Gas Pipeline Company of America.

Proof of Service

I, Coleman Hayes, one of the attorneys for Natural Gas Pipeline Corporation of America, certify that I mailed a copy of the above and foregoing application to T. Murray Robinson, attorney for Panoma Corporation, on March 13, 1951.

(S.) Coleman Hayes.

[File endorsement omitted.]

[fol. 25] Before the Corporation Commission of the State of Oklahoma

[Title omitted]

Response of Natural Gas Pipeline Company of America—Filed March 27, 1951

1

Comes now Natural Gas Pipeline Company of America (Natural), a party to the above styled proceeding, and in response to the application herein respectfully shows:

Natural is a natural gas company within the meaning of the Natural Gas Act of 1938 and amendments thereto.

It owns and operates under certificates of public convenience and necessity a natural gas pipeline transmission system extending northeasterly from a point near Gray, Oklahoma, through which it transports and sells large quantities of gas to consuming markets in Iowa, Nebraska, Illinois and Indiana, including the Chicago Metropolitan area. Such system includes a lateral extending from its No. 1 compressor station in the Guymon-Hugoton [fol. 26] field to a point on the main line, about 22 miles northeast of Gray, Oklahoma. The markets so supplied rely solely on Natural for gas for residential, commercial and industrial use. The quantities of gas so transported and sold aggregate 183.8 billion cubic feet annually, averaging 503.6 million cubic feet daily, measured at a pressure base of 14.65 lbs. per square inch.

2

The gas so transported and sold by Natural is not natural gas as produced from the wells. It is only a constituent of such natural gas, being what is known as dehydrated residue gas,—the hydrocarbons remaining in gaseous form after the natural gas produced from the wells has been processed by and through an extraction plant and the hydrocarbons therein contained, commercially usable in liquid form, have been extracted as liquids, and after the moisture content of such residue gas has been reduced by the use of dehy-ration facilities. Natural has not transported, and cannot safely, economically and efficiently transport, through its pipeline transportation system, natural gas as produced from the wells in the areas from which it obtains its supplies of gas because of the [fol. 27] presence of such hydrocarbons commercially extractable in liquid form. Such hydrocarbons must be removed and the moisture content of the residue reduced before the gas transported enters Natural's long distance pipeline operated at high pressures.

3

On December 1, 1946, Natural as purchaser entered into a written contract with D. D. Harrington, Stanley Marsh,

Jr., Estelle Farris Marsh, T. J. Wagner, Jr., Ida D. Marsh, Isobel Marsh McCormick and husband, Jas. L. McCormick, and Stanley Marsh, Jr., Independent Executor of the Estate of Stanley Marsh, deceased, all of whom were partners doing business under the firm name of Harrington & Marsh, as sellers. Such firm later assigned such contract to applicant herein. Under such contract:

(a) Sellers agreed to sell to buyer a daily average of 76,000,000 cubic feet of dehydrated residue gas, as generally described in numerical paragraph 2 above.

(b) Sellers agreed to drill on certain acreage in the Guymon-Hugoton field on which they held leases such a number of wells as would enable sellers to deliver to buyer the daily volumes of gas required by the contract, to [fol. 28] produce such gas, and to construct such gathering lines as would enable sellers to deliver the natural gas produced from such wells to the inlet of buyer's compressor station No. 1.

(c) Sellers also agreed to construct a gasoline plant and dehydration plant connecting with the discharge side of buyer's compressor plant and so operate such plant as to remove from the raw gas as produced from the wells all hydrocarbons and water necessary to produce a dew point of the gas then to be delivered to Natural at the inlet of Natural's pipeline at the discharge side of such extraction plant, which should not exceed a temperature of 25 degrees Fahrenheit at a gauge pressure of not more than 785 pounds per square inch, in order—the formation of hydrates and/or the condensation of hydrocarbons would not occur in Natural's pipeline system.

(d) Sellers were authorized at such plant to extract from the raw gas entering such plant nitrogen, helium and also natural gasoline, butane, propane and other hydrocarbons other than methane, together with any methane necessarily removed from the gas in the process of recovering such other constituents; but sellers were not authorized by such operations to reduce the heating value [fol. 29] of the hydrocarbons remaining in gaseous form below 950 British thermal units per cubic foot.

(e) If sellers should fail to operate their said gasoline and dehydration plants in accordance with such agreement, buyer was authorized to take possession thereof,

and operate the same for the account of sellers, marketing or otherwise disposing of all products therefrom and accounting to sellers for the receipts therefrom until such a time as it should receive assurance from sellers that such plants would thereafter be operated as provided in such contract.

(f) Natural agreed to pay for such residue gas as should be delivered into its pipeline at the discharge of such extraction and dehydration plant the sum of 6¢ per thousand cubic feet until July 1, 1951, 7¢ per thousand cubic feet for a five-year period commencing on July 1, 1951, and 8¢ per thousand cubic feet for the remainder of the contract term; all volumes to be measured at a base temperature of 60 degrees Fahrenheit and at an absolute pressure of 16.4 lbs. per square inch. Such contract also provided for certain increases and decreases in such prices [fol. 30] in accordance with the heating value of the gas delivered from such plant of sellers into Natural's pipeline.

4

It was recognized by the parties that the pressure of the gas at the end of sellers' gathering system would be substantially below the pressure of the gas at the wells, far below the pressure at which the extractable hydrocarbons could be most economically removed by sellers, and far below the pressure required to enable Natural to take the residue gas into its pipeline for transportation. Since it was necessary that Natural construct a compressor station by which to increase the pressure of the gas purchased to the point where the gas could enter Natural's pipeline for transportation, the parties agreed that Natural's compressor station would be constructed at the suction side of sellers' extraction plant, thus providing the increase in pressure required by sellers for economical and efficient recovery of liquids in its extraction plant, and in order that the pressure of the residue gas at the discharge of such plant into Natural's pipeline would be adequate for Natural's transportation requirements. They also agreed that all hydrocarbons removed from such gas in the process of such compression by Natural should [fol. 31] be the property of sellers.

Thus, the compression of such gas by Natural was for the mutual benefit of sellers and buyers, and Natural's compressor station was placed at the suction side rather than the discharge side of sellers' extraction plant wholly for the economic interest of sellers in the extraction of liquids from the natural gas.

5

Under such contract, sellers were required to deliver the natural gas produced by it "into the custody" of Natural on the suction side of such compressor station; and after compression, Natural was required to redeliver such gas to sellers' gasoline plant. Thereupon, after the treatment of such gas at such extraction and dehydration plant of sellers, sellers were required to deliver the dehydrated residue gas into Natural's pipeline at the outlet of such plant. At or near such point of delivery, Natural was required to install a metering station for the purpose of determining the volumes of gas delivered by sellers from such extraction plant into Natural's pipeline. It was expressly provided in such contract that title to the dehydrated residue gas purchased by Natural should pass to Natural at such point of metering.

[fol. 32] 6

The parties to such contract (including Panoma Corporation, as successor in interest of sellers under such contract) have faithfully performed the obligations of, and operated under, such contract from the date of first delivery by sellers to buyer in August, 1948, to date.

7

Applicant herein sells none of the production from the wells covered by its contract with Natural at the wells or elsewhere in its raw state. All of such gas as is produced from such wells is gathered through applicant's gathering system to a central point at the inlet of Natural's compressor station (placed for applicant's convenience at the suction rather than the discharge of applicant's extraction plant) where such gas is delivered into the custody of Natural, without measurement. After the gas has been

compressed by Natural, it is delivered back to applicant's extraction plant. At such plant, applicant extracts large quantities of liquid hydrocarbons and products, and after such extraction delivers into Natural's pipeline the residue gas remaining after such extraction. Applicant sells the [fol. 33] liquid hydrocarbons extracted from such raw gas for large sums of money.

8

Applicant realizes (through the sale of such liquid hydrocarbons and products extracted at such plant and sold and through the sale of the residue gas to Natural) from such natural gas so produced from the leases owned by it in the Guymon-Hugoton field, and covered by applicant's contract with Natural, the equivalent, on the average, of more than 7¢ per thousand cubic feet (measured at 14.65 lbs. pressure) at the well head within the terms and meaning of Orders Nos. 19514 and 19515 of this Commission as interpreted by its Order No. 19702, and by the opinions of the Supreme Court of Oklahoma and the Supreme Court of the United States.

9

Natural shows that in Article Fourteen of the contract herein referred to, it is expressly provided:

"Contract Subject to Laws and Regulations.

This contract is subject to present and future valid laws and present and future lawful orders of all regulatory bodies now or hereafter having jurisdiction over the parties; and should at any time during the term of this contract either party, by force of any such law [fol. 34] or regulation imposed, be ordered or required to do any act inconsistent with the provisions of this contract, the contract shall, subject to the other provisions hereof, continue nevertheless, but shall then be deemed modified to conform with the requirements of such law or regulations."

Therefore, if any valid order of this Commission, properly construed, requires Natural to pay any sum or amount inconsistent with the specific price provisions of the contract, the contract, subject to the other provisions

thereof, will be its own terms be modified to conform with such requirement and applicant will have, for the enforcement of such contract as modified, an adequate remedy at law. Natural will comply with the provision of such contract above quoted.

10

If said order were construed as requiring Panoma to realize for the dry gas constituent of the gas or for any other constituent of the gas produced from the Guymon-Hugoton field, the same price as provided by said Order 19514 for natural gas there produced at the well head, without giving consideration to the sums received by applicant from the sale or other utilization of the other con- [fol. 35] stituents of such natural gas, or if, under the circumstances, the Commission should require that Panoma cease to deliver such residue gas to Natural under the contract, such order would be discriminatory, arbitrary and void, and contrary to the provisions of all applica*lbe* statutes authorizing action by the Commission, and would be violative of Sections 7 and 15 of Article II of the Constitution of Oklahoma, and the Fourteenth Amendment to the Constitution of the United States, and would impose a discriminatory and unlawful burden upon interstate commerce, contrary to the provisions of Section 8 of Article I of the Constitution of the United States. Natural, to the full extent of its interest in the proper construction of said order of this Commission, invokes the protection of all applicable provisions of both said Constitutions.

Wherefore, premises considered, Natural respectfully says that, under the facts, there is no matter within the jurisdiction of the Commission presented for consideration and that the application should be dismissed.

S. A. L. Morgan, Warren Spies, D. H. Culton, Monnet, Hayes, Brown & Bullis, by (S.) Coleman Hayes, Attorneys for Natural Gas Pipeline Company of America.

[fol. 36] Proof of Service

I, Coleman Hayes, one of the attorneys for Natural Gas Pipeline Company of America, certify that I mailed a copy of the above and foregoing response to T. Murray Robinson, attorney for Panoma Corporation, on March 27, 1951.

(S.) Coleman Hayes.

[File endorsement omitted.]

[fol. 37] Before the Corporation Commission of the State of Oklahoma

[Title omitted]

Transcript of Testimony

On April 5th, 1951, said cause came on for hearing before the Corporation Commission of the State of Oklahoma, pursuant to Order setting said cause for hearing and the order of continuance granted in said cause.

Appearances:

The Applicant appeared by T. Murray Robinson, and Wallace H. Robertson.

The Natural Gas Pipe Line Company of America appeared by Coleman Hayes, D. H. Culton, and Warren Spies.

The Corporation Commission appeared by Floyd H. Green.

The cause proceeded to hearing, as follows:

[fol. 38] Offers in Evidence

Mr. Green: I offer in evidence as Exhibit 1, a copy of the Application in said cause;

As Exhibit 2, a copy of the Order Setting the Cause for Hearing on February 14th, 1951;

As Exhibit 3, a copy of the Notice of Hearing issued by the Commission;

As Exhibit 4, a copy of the Affidavit of Mailing Notice, signed by Edna Conner;

As Exhibit 5, a copy of the Proof of Publication of the Notice in Oklahoma City;

As Exhibit 6, a copy of the Order Continuing Said cause to this time and place;

As Exhibit 7, a copy of the Response of the Natural Gas Pipe Line Company of America.

I offer exhibits 1 to 7 inclusive.

Chairman Bond: Received. Do you want to make a statement, gentlemen?

Mr. Robinson: I think a brief statement would be of assistance to the Commission.

Chairman Bond: Very good.

Reporters Note: Opening statements were made by Counsel for the parties.

Testimony was then introduced, as follows:

[fol. 39] Chairman Bond: Call your first witness.

Don Harrington, called as a witness, being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Your name, please?

A. Don Harrington.

Q. What is your official connection with the Panoma Corporation?

A. President.

Q. When was the Panoma Corporation organized?

A. In 1948.

Q. Did the Panoma Corporation succeed to Oklahoma properties of Harrington and Marsh, a partnership?

A. Yes, sir.

Q. Did they succeed to all the rights and liabilities in respect to previous transactions with the Natural Gas Pipe Line Company?

A. Yes, sir.

Q. For how long a period of time has Harrington and

Marsh or Panoma Corporation been delivering gas to Natural Gas Pipe Line Company?

A. Since August, 1948.

[fol. 40] Q. That was subsequent to the date of the Commission's price order in the case?

A. Yes, sir.

Q. At what point is that gas delivered to Natural Gas Pipe Line Company?

A. It is first delivered at the intake of their process station, about three miles west of Hooker, Oklahoma.

Q. What,—how many wells do you now own in the Panhandle?

A. Under this contract, 117, I believe it is.

Q. Then, are there a hundred and seventeen wells which, production from which, is being supplied to Natural Gas Pipe Line Company?

A. That's right.

Q. About how many cubic feet of gas per day is currently being delivered?

A. About,—at the intake under compressor station, approximately eighty million feet of 15.4 gas.

Q. Is the gas metered at the intake side of the compressor station?

A. Not at that point. It is metered at the well head, but there is no master meter at the intake side.

Q. As a practical matter could a master meter accurately [fol. 41] report volumes at that point?

A. Yes, very simply.

Q. Now, have you made a computation of the total moneys which Natural Gas Pipe Line Company has paid Panoma Corporation for gas which has been delivered to them up to the close of business, December 31, 1950.

A. Yes, sir. We received total, from August '48 to the end of 1950, inclusive, a total received for three million, six hundred and thirty-four thousand, five hundred and twenty-three dollars and seventy-four cents. That's at a price basis of 5.12 cents of 14.65 gas.

Q. It's the volume of gas delivered to Northern Natural, reduced to a pressure base provided by the Corporation Commission, you received a 5.12 cents per thousand cubic

feet, gas payment from the Natural Gas Company for this gas?

A. Yes,——

Q. From the Natural Gas Pipe Line Company.

A. Yes, th. 's the net volume actually delivered them at,—in their main 26-inch pipe line.

Q. Now, you haven't taken into account the deliveries and payments since January 1, 1951?

[fol. 41-a] A. No, sir.

Mr. Robinson: If the Commission please, I think at this point it may be agreed that with respect to both parties that computations of facts which are before the Commission may be terminated as of December 31, 1950, for the simple reason that they cannot be extended on into the future, accurately.

Mr. Culton: What,—well, what I think you intended to say is that the same conditions which existed December 31, 1950, has continued down to this date.

Mr. Robinson: That's satisfactory. Yes, sir.

Chairman Bond: Very well.

Q. Have you sent Northern Natural a statement for this gas?

A. You mean Natural Gas Pipe Line Company?

Q. I mean Natural Gas, yes,—Natural Gas Pipe Line Company, a statement for this gas?

A. Yes, they have been invoiced for all the deliveries on what we calculated the price to be under the Commission's order.

Q. Exhibit Number 8 which you have before you is a photostatic copy of something,—what is that?

A. That is the invoice which you referred to, which we [fol. 42] submitted them.

Q. Is that invoice brought down to what date?

A. Down to the end of January, 1951; however, the figures which I quoted were the end of December, 1950, and——

Q. Now, that invoice indicates a difference in money of——

Mr. Culton: If it please the Commission, counsel has started to ask for an interpretation of the invoice as a

whole. We have no question whatever with respect to column 1, referring to period. Column 2, referring to pipe line and fuel volume at 14.65. Column 3, referring to Panoma Fuel and Shrink. Column 4, referring to total inlet at compressor station, or Column 6, referring to the payments made by Natural. We object to interrogation as to the value at 7 cents. It's a matter of computation, of course, if it were an issue before the Commission. For the same reason we object to column 7, additional amount due and column 8, six percent interest. In the first place, if it were before a court our position would be that the interest question wouldn't be allowable. In the 9th column on excise tax, which is obviously not a matter before the Commission we have informed the applicant that we accept their figures, their computation, as to the loss by [fol. 43] fuel and shrinkage. We agree to the volumns which they show of gas that's been delivered, measured at 14.65,—the sum of those two columns and the amount which has actually been paid. Our objection is that the other columns are wholly immaterial to this inquiry.

Chairman Bond: You contend, though, that you're not paying seven cents at the mouth of the well, but you contend by reason of other products and other processes that they average more than seven percent?

A. That's right.

Chairman Bond: Is this witness trying to show what they average up?

Mr. Culton: I don't know. This 7-cent column is just a multiplication of the items shown in 4, being the total volumns of natural gas, delivered at the inlet or compressor station by 7. Then, column 7 is subtracted from that column of the items shown,—as I say, we have no objection.

Chairman Bond: Or is he trying to show that these are two separate transactions. That one ought to be the sale of gas at seven cents or is he taking some other action that they are a separate and independent [fol. 44] action?

Mr. Culton: Well, he hasn't shown what these columns represent as a matter of fact. The questions were on the assumption that that has been shown.

Mr. Robinson: I just asked him to identify the exhibit at that point. I hadn't offered it in evidence.

Chairman Bond: Well, if he is just identifying them he may identify them and when they are offered in testimony they may be objected to then.

Mr. Culton: I probably misunderstood the question he had started to ask. I'm sorry.

Chairman Bond: Very good.

Examination, continued:

Q. May I inquire, Mr. Harrington, what this first column is?

A. The first column is the period reflected by the invoice.

Q. The second column is what, please sir?

A. It's the total volume delivered to, or sold to Natural Gas Pipe Line during that monthly period.

Q. Is that after going through two meters,—is that after two meters that you have?

A. Yes, that's the actual measure of gas delivered for [fol. 45] which they tendered us payment.

Q. Now, then, what is the next column please?

A. That is the calculated volume of the actual shrinkage or usage of gas in connection with the dehydration, or processing at our own plant.

Q. And these two columns give you then, the amount of gas which was delivered to them at their compressor station?

A. Yes, sir, total well head volume.

Q. Now, then, this total well head volume of gas which is delivered to them, is that shown at the next column, total inlet at Compressor Station?

A. Yes, sir, that's column number 4.

Q. Now, then, seven cents is the mathematical computation of the volume delivered at 7 cents according to the Commission's price order?

A. Yes, that's the well head volume multiplied by seven cents, 14.65.

Q. Now, then, what is the next column?

A. The next column is the actual payment of the contract stipulated price, which they paid us for each book.

Q. Then, this column marked Additional Amount Due is

merely a subtraction of the amount which they paid from [fol. 46] the amount which would be the price at 7 cents?

A. Yes, sir, that's correct.

Q. The next column would simply be a column indicating what a six percent interest would be, from the date which payment would have been due down to the present time?

A. Yes, sir, down to February 28th.

Mr. Robinson: I would concede that the last column has to do with one-half of the excise tax which is probably not a proper part of the proof.

We would now like to offer in evidence all of the matters shown on this exhibit, except the last column.

Mr. Culton: We realize, of course, that your mathematical calculations as such are not injurious to anybody; however, so that the Commission may understand that we not concede that in this proceeding, there is any relief that could be granted by way of valuing this particular gas or providing for interest. Our objection to column 5, 7, and 8, is only that the information thereon is wholly immaterial. I understand that column nine is not offered.

Commission-- Jones: The objection is overruled, and exceptions allowed.

Mr. Robinson: We offer all the columns on the exhibit, [fol. 47] number 1 to 8, excluding 9.

Commissioner Jones: The exhibit will be received. Exceptions will be allowed.

Examination, resumed:

Q. Mr. Harrington, who owns this compressor station to which you deliver this gas?

A. The Natural Gas Pipe Line Company of America.

Q. Do you *own* the property on which it is built?

A. No, sir.

Q. Do any of your employees operate that plant?

A. No, sir.

Q. Did you pay a part of the cost of erecting the plant?

A. The Compressor plant,—no, sir.

Q. The point at which they received the gas from you was the inlet side of that compressor?

A. Yes, sir.

Mr. Robinson: That's all from this witness.

Cross-examination.

By Mr. Culton:

Q. Mr. Harrington, you have been in the gas business quite a number of years?

A. Yes, sir.

Q. And actively identified with the operation of extraction plants and the sale of residue gas and extraction [fol. 48] of liquids for quite a good many years?

A. Yes, sir.

Mr. Robinson: Now, if the Commission please, I asked him nothing whatever about extraction plants in direct examination. Our position is that since we delivered gas to them, at this point, have received so much money,—they obviously haven't paid seven cents for it,—it's wholly immaterial, doesn't have anything to do with gasoline plants and they are not involved or in issue in this case. I don't want to have to continuously repeat our objection every time there is something involving a gasoline plant and I want to make the objection now so that it will be good for the entire record, that anything having to do with gasoline plants operations at a profit which is derived from this is obviously,—and I object to it.

Commission-- Jones: Confine your cross examination to questions asked on direct.

Mr. Culton: I think I will if Counsel will just notice a little further,——

Q. The gas which is delivered to Natural Gas Pipe Line Company does not constitute the gas which goes into Natural's Compressor station. I mean the gas that [fol. 49] Natural pays for, does not constitute either the volume or the quality of gas which goes into Natural's Compressor Station, does it?

A. It comprises approximately 95% of the volume. The

quality is changed by the removal of the substances which the contract provides we are obligated to them.

Q. Yes. I hand you a document which is entitled "Gas Purchase Contract between National Gas Pipe Line Company of America and Harrington & Marsh, dated as of December 1, 1946," and ask you if that is a copy of the contract.

A. Yes, sir.

Mr. Robinson: We object to the contract.

Q. I hand you herewith a photograph and ask if that photograph was taken from your files?

A. Yes, sir.

Mr. Culton: May we have it marked for identification. I wonder if we can get it where the Commissioners can see it, and I want to show on that photograph the Compressor station of the Natural and state whaat the other facilities shown on that photograph are.

A. In the foreground is a portion of the Panoma Gasoline Plant and facilities and the large building sitting [fol. 50] rather diagonally in there is the compressor station of the Natural Gas Pipe Line Company.

Q. How far apart are the compressor station of the Natural and the facilities of your plant?

A. Three-eighths to half a mile.

Q. Are they on the same survey of land?

A. No, sir. One is in section 7; the other in section 8.

Q. Is there a road in between them?

A. Yes. There is a county highway in between them.

Q. I hand you a document which purports to be a schematic chart not drawn to scale, of course, but which purports to show the relationship of the facilities almost schematically. This is a copy of the chart that's before you gentlemen.

Now, the gas comes from Panoma's gathering line into the facilities of the Natural Gas Pipe Line Company compressor station without measurement?

A. Yes, sir, except the well has well head gas.

Q. And there is a gasoline drip by which circulation coming out during the transportation is taken out before the gas gets into the compressor station?

A. There are several drips.

Q. All right. Now, with respect to Natural's property [fol. 51] before it gets to the compressor station.

A. I presume there is but I have no definite recollection of it.

Q. You recognize that pure gasoline may come out——

A. I would say the liquids would be extracted.

Q. The gas that you deliver to the Natural Gas Pipe Line Company which is measured at the metering station is taken into Natural's line.

A. Yes, from 3/8 to a half mile.

Q. And from there it goes to Natural's main line?

A. That's my understanding, yes, sir.

Q. And goes to Natural's markets, Illinois and other points in the east.

A. As a matter of fact it goes through Natural's Pipe line from the time it enters the compressor station.

Q. Yes. Natural owns the pipe from there on. The gas that you deliver to the Natural Gas Pipe Line Company and which is measured at the metering station is taken through Natural's lines?

A. Yes, sir. For about 3/8 to a half mile, yes, sir.

Q. I'm talking about after it is measured.

A. Oh, yes, sir.

Q. And there, from there it goes to Natural's main line? [fol. 52] A. That's my understanding, yes, sir.

Q. And it is there it enters the main line and goes to Natural's markets in Illinois and other points to the east? As a matter of fact it goes through Natural's pipe lines from the time it enters the inlet at the compressor station?

A. Yes.

Q. Natural owns,—you own the pipe up through the Compressor station, and Natural owns the pipe from that point on?

A. Yes, sir.

Q. Off of that pipe, the gas goes into your facilities for extraction and dehydration?

Mr. Robinson: We object to that, if the Commission pleases. It's our position that the gas is delivered to them at the compressor station and they pay for that gas,

is about 5.12. Now, that's as far as the witness was questioned on direct examination.

Chairman Bond: Are you contending that it is not proper cross examination?

Mr. Robinson: Not proper cross examination and not an issue in this case.

Chairman Bond: Well, the Commission might rule on [fol. 53] the not being proper examination. I don't know. I didn't hear all the examination. The Commission's going to appear liberal on the receipt of testimony and we will admit a lot of it, probably; for what it's worth, so we can pass on it when we try this case. Of course, if you didn't bring this out on direct examination, it's improper cross examination. I don't know. The Commission will receive the testimony for what's it's worth.

Mr. Culton: Shall I proceed?

Chairman Bond: You may proceed.

Q. Mr. Harrington, Natural does not pay you for the volume of gas which enters its compressor station, does it?

A. Not for the total volume, for about 95% of it.

Q. Natural does not pay you for the quality of gas that enters the compressor station, does it?

A. Well, the gas is processed in accordance with the contract as I said before, because we're obligated to do so. It isn't the same identical gas. No.

Q. You take out a substantial portion of the liquids from the gas which enters the compressor station before you meter the gas to Natural?

A. Yes, sir. The water and the liquid hydrocarbons.

[fol. 54] Q. Now, the gas which enters the compressor station is not of a quality which is deliverable by you to Natural under its contract, is it?

A. No, sir.

Q. That quality must be changed by the extraction of liquids?

A. That's our contractual obligation, yes.

Q. Yes. Now, you recognize that under the contract, if there is a leak in the extraction unit, so that large

volumes of gas would escape, Natural would be under no obligation to pay you for that escaped gas?

A. I believe they would, if such a leak was the result of negligence on the part of Natural.

Q. But if it's the result of negligence on your part or an unavoidable accident?

A. Well, then, it would be our loss.

Q. The contract expressly states that title passes from Panoma to Natural at the meter station. You recall that, do you not?

A. Yes. That's our point of sale.

Q. Yes. And that, you knew, referred to residue gas and not to raw material, to raw natural gas, didn't you?

A. Obviously, except as to such gas as Natural uses for [fol. 55] its compressor fuel and that is raw gas, and for that quality, it's sold as raw gas.

Q. Let me refresh your memory. You've been away some, and may not realize that there was an amendment to the contract, was there not?

A. Oh.

Q. With a separate measuring of residue gas, separate measure of residue gas for the compressor plant?

A. There was such an arrangement, but it's purely at the option of the Natural Gas Pipe, and any time the Natural Gas Pipe told us to deliver them raw gas for compressor usage we would be obligated to do so at the contract price.

Q. Yes, but you would be *be* getting more BTUs to them than are delivered when you deliver residue gas to them.

A. The raw gas contains more than the residue.

Q. Yes. The chart has been identified as Exhibit 11 and correctly trace the flow of the gas, does it not, from the time it enters your gathering line until it is measured at Natural's meter station?

A. Yes.

Q. Recognizing the fact that the schematic chart isn't drawn to scale?

[fol. 56] A. Yes, sir.

Q. You have known for a number of years of the nature of the operations of Natural Gas Pipe Line Company, haven't you?

A. Yes, sir. In fact, since even before its birth.

Q. Yes, sir. You know that it starts with the facilities in the Panhandle field of Texas, formerly belonging to Texhoma, and has a transmission line extending up to and selling gas for resale in the states of Nebraska, Iowa, Illinois, Indiana——

A. Yes, sir.

Q. And particularly in the Chicago Metrolpolitan area. You knew, in 1946, did you not, that Natural contemplated the expanision of its faccilities for the purpose of transporting additional quantities of gas——

A. Yes, sir.

Q. To those markets. And you and Natural entered into negotiations with a veiw that the old firm of Harrington and Marsh would provide from its leases in Texas County, Oklahoma, about seventy-six million feet daily of the requirements from those added facilities?

A. Yes, sir.

Mr. Robinson: If Your Honor please, I have an objec- [fol. 57] tion to make to the last question.

Chairman Bond: Very good.

Mr. Robinson: The question was that he knew that Northern Natural wanted gas.

Mr. Culton: That's Natural gas.

Mr. Robinson: That's right. Excuse me, sir. That the Natural Gas Pipe Line Company wanted gas, and that they entered negotiations with Harrington and Marsh first. Now, I can't understand what negotiations have to do with this. I don't believe the contract has anything to do with this controversy.

Chairman Bond: The contract probably will be held by them as being something that they can rely on in some way, and I think they can ask about the contract if they want to, but any outside agreement I don't think is admissable. I think the thing that is admissible is the order of the Commission and the contract. And it may be the contract is not admissible, but the Commission is going to admit the contract. I don't think any outside agreement that this gentlemen wants to testify is admissible unless it is shown it was made by all the parties and relates directly to this case.

Mr. Culton: We have not asked for any of the terms [fol. 58] of the negotiations, Your Honor. No. We just asked whether or not they entered into the negotiation. My next question is:

Q. Those negotiations culminated in the contract which has been referred to and identified as exhibit 9.

A. They did.

Q. There have been some slight modifications of the contract, but primarily that contract is now the contract which is being observed and in force between Panoma as successors to the old firm of Harrington and Marsh, and Natural Gas Pipe Line Company.

A. It's the contract now in effect. I don't know whether it's being observed or not.

Q. Well, unless the requirements of the contract have been changed by the Commission's order?

A. Yes, sir, that's true.

Q. In other words, the point is, certainly, up until your letter written after January 1, 1951, because on both sides, faithfully comply with that contract?

A. Yes.

Q. And unless the contract has been in some way affected by the Commission's order, they are still complied with?

[fol. 59] Chairman Bond: I think that's strictly a question of law,—you may answer it. It's strictly a question of law as to whether or not the Commission's contract has been interfered with.

Mr. Culton: Yes. I appreciate that, Your Honor.

Q. Now, during the time you were negotiating for this contract, that,—all the gas which Natural ships in its lines to the Illinois markets, is dehydrated residue gas?

Mr. Robinson: If Your Honor please, he is asking him again what he knew prior to the time he entered into this contract about gas. Now, that's not material. We object.

Chairman Bond: What has that to do with the issue?

Mr. Culton: The next question will be why did they provide for the delivery of only residue gas at the meter station?

Chairman Bond: What does that have to do with the contract? Doesn't the contract provide for the character of the gas?

Mr. Culton: It does. Following that, my question would be,—why the compressor station was put in front [fol. 60] of the gasoline station instead of immediately in front of the meter?

Chairman Bond: Well, if that has anything to do with this suit, why, we'll admit it for the present.

Q. You did know, did you not, that Natural Gas, that Natural transports from its Gray County, Oklahoma, station its residue, dehydrated gas?

A. Yes, sir. I believe that's true of all transmissions of a similar nature.

Q. It's necessary to transport that character of gas because of the danger of the formation of hydrates and the danger of liquid hydrocarbons falling out in the lines during transportation?

A. Yes, that's true.

Q. It's more economic and also safer for pipeline transportation to handle that type of gas rather than Natural Gas as produced from the wells?

A. Yes, sir.

Q. and, for the many years, the extraction of gasoline has been a profitable operation in the Panhandle Field and in the field?

A. In a varying degree, yes, sir.

Q. Yes. So much so that for many years it was [fol. 61] profitable to extract gasoline without any disposition of residue.

A. Well, it was at one period. Yes.

Q. That's what I say. And the price of gasoline has something to do with the profits from the operation of such a plant, does it not?

A. Obviously.

Q. The profit from the extraction of gasoline does not increase in exact proportion as the price of gasoline increases, does it? In other words, the doubling of the price of gasoline would more than double, ordinarily, the profit resulting from the extraction of gasoline?

A. That's true, because your fixed charges don't vary but the price.

Q. Yes. The price of the gasoline, I believe, in 1946 was about five or five and a quarter. That is 26 pound gasoline, was it not?

A. I don't exactly recall what it was. I don't feel qualified to testify.

Q. You do know that after that time the price of gasoline dropped to a rather low ebb?

A. I believe 1948 was the peak year we had; it varied greatly, and I can't honestly recall.

Q. But you do know it was lower in 1949 and '50 than [fol. 62] it was in 1948?

A. Yes, sir.

Q. And lower in those years than it is now?

A. Not appreciably at this time.

Q. Well, what is the present price of natural gasoline, 26-pound gasoline?

A. I think five and a quarter *of* thereabouts.

Q. You haven't inquired recently, have you?

A. No, I haven't.

Q. Now, there are other products besides 26-pound gasoline that are taken out of raw gas as produced in the wells, are there not?

A. Yes, sir.

Q. You have butanes, propanes——

A. Yes, sir.

Q. And in your plants you extract those additional products also, do you not?

A. At times we do, yes, sir.

Q. The products which you extract from the gas are determined within the range of certain maximum and minimum by exactly what you prefer to take out at your plant?

A. No. They are determined by the amount we can take [fol. 63] out and still meet our minimum heat requirement units under the contract.

Q. That's what I say. It's in between the maximum and the minimum?

A. Yes, sir.

Q. You must take enough out, so that the dew point

of the residue gas will not exceed 25 degrees at a pressure of 785 pounds?

A. Yes, sir.

Q. That's one. Another is that you're not supposed to take out enough of the hydrocarbons to reduce the heat value to fall below 950 BTU.

A. 960 I believe.

Q. Well, the price range is based on 960, and the minimum is 950, is it not?

A. Well, subject to your acceptance of such gas.

Q. Yes. If the price of certain hydrocarbons is high enough, that you will get more out of those hydrocarbons if you take them out as liquids than if you put them into the residue stream and measure them to natural then, you'll take them out in liquids as a matter of business judgment?

A. They're worth more as liquids.

[fol. 64] Q. Yes. So if the,—depending on the market, if the value of certain hydrocarbons within the range which is permitted to you in the contract, exceeds the amount you would receive for those same hydrocarbons if they were measured into the residue stream going to Natural, you'd take them out, but if you get more money selling them as residue, increasing the heat value than you would be taking them out then you would put them in the residue stream.

A. That's true. If you're talking about net money after operations.

Q. Yes. I'm talking about profits. And you do, as you have a perfect right to do under the contract, let that control the amount of hydrocarbons you take out.

A. Yes, sir.

Q. If your heating value of the gas delivered is in excess of 960 BTU, you get a premiusm?

A. 965.

Q. 965. You're right. You get a premium from that gas?

A. Yes.

Q. If it is below you get a little penalizing, under the contract?

A. Yes.

[fol. 65] Q. As a matter of fact, during this entire period, your gas has averaged higher,—the residue gas delivered to Natural at the metering station has averaged higher than 965 BTU, hasn't it?

A. Yes.

Q. And you have in fact received slightly more for the gas during that 27 months than six cents on 16.4 pound basis, because of your BTU content?

A. Yes, sir, slightly more.

Q. So that the price that Natural pays is not for the volumes of gas which are delivered into its compressor station but for the volumes of gas which are measured after the gas has gone through your gasoline plant and dehydration plant. That's correct, isn't it?

A. It's based on the quantity that goes through the sales meter. Obviously.

Q. And the quality of gas, for which Natural pays under the contract is not the quality of the gas which goes into the compressor station but the quality of the gas which goes through the meter?

A. For which they pay us.

Q. Yes.

A. Obviously, yes, sir.

[fol. 66] Q. Yes. Mr Harrington, you have testified with respect to certain columns on exhibit number 8.

A. Yes, sir.

Q. Column 1, the period; column 2, the pipe line and fuel volume; number 3, the Panoma Fuel and Shrink; number 4, the total of the inlet at the Compressor Station, which you referred to as the well head gas. Number 6, the Payment,—now, items shown on column number 2 represent, do they not, the total volumes of gas for which Natural has paid you as the contract made on the basis of 16.4 but adjusted in volume?

A. Yes, sir.

Q. In other words, those are the volumes which have gone to Natural here at the meter stations leading to the main line, or at the metering of the gas used in the compressor station?

A. Yes, sir.

Q. The total of the two?

A. Yes, sir.

Q. Now, you have a second column, Panoma Fuel and Shrink, what is that?

A. That, as I testified before, is the net plant usage for fuel and shrinkage at the gasoline dehydration point. [fol. 67] Q. In other words, in taking out the liquids and in taking out certain moisture a portion of the elements of the raw gas which went into the compressor station have been removed?

A. That's right. Part of the gas we use as fuel.

Q. And in addition to that removal,—that's what you referred to as shrinkage, isn't it?

A. Yes, sir.

Q. In addition to that which is removed, you used in your plant certain volumes of gas for plant fuel?

A. Yes, sir.

Q. Now, the gas that you use in your plant for plant fuel, is a part of the gas which goes into Natural's compressor station isn't it? It's included in that gas?

A. The total volume goes through the station, yes, sir.

Q. And you do not pay Natural anything for that fuel gas, do you?

A. It's our gas, except it's in their custody. It's in your custody to be returned to us.

Q. That's right. Now, then, column numbeer 4 is nothing in the world but an addition of column number 2 and column number 3?

A. That's true.

[fol. 68] Q. And it is on the assumption and your best judgment that that volume which goes into the compressor station represents the well head volume of raw gas?

A. Yes, sir.

Q. This further question,—you have shown on column 6 of exhibit 8 the number of dollars that Natural paid you for the volume of residue gas shown in column 2. That's correct, isn't it?

A. Yes, sir.

Q. Now, you have received substantial sums of money from the liquids that were taken out and represented in the shrinkage portion shown in column 3?

A. Yes, our plant has gross sales——

Q. Now, your office has advised us that those sales were made to the amount of $1,366,125.29. Can you check that figure for me?

A. I'd much prefer that part of,—but I would say that the men who prepared those figures would be much better qualified. I've gone over them just briefly. I don't know anything about them. I had no part in the preparation of them.

Q. He's the same man that prepared these figures on column six that you testified to?

[fol. 69] A. No, I had something to do with this, but I had nothing to do with that exhibit.

Q. And you sold various and sundry liquids and have kept records of those?

A. Yes, our office has.

Q. Yes, that's what I mean. That's all.

Commission-- Jones: Just a minute. I want to ask you a question.

Examination.

By Commissioner Jones:

Q. How do you settle with your royalty owners. Do you settle with them on the basis of this compressor station or do you settle with them on the basis of .12 cents after it comes through the plant, plus the net proceeds of the plant?

A. We pay the actual royalty. In other words, we pay on the basis of the Commission's order.

Q. Have you been paying on the basis of seven cents?

A. Yes, they have all been paid seven cents.

Q. In connection with the question you have just been asked, you don't intend to say that if the price of gas gets up to eight cents, so as a matter of fact, from the the residue and gasoline and other liquids you net 8 or 9 cents a pound that you will immediately make that [fol. 70] payment to the royalty owners?

A. That would be net return to us,—if, after a fair return on the plant and what is customary to the industry is done, we do get eight cents, why, then, it's obvious

that if we should get a price up to that range we should certainly be glad to pay our royalty owners——

Q. You are not saying, though, that you are going to adopt the policy of the royalty owners going up and down with you——

A. I say we are giving it very serious consideration, if we establish our right to get the little price here—yes.

Q. When did you make payment to the royalty owners that you referred to?

A. During the last sixty days, I presume.

Examination.

By Mr. Culton:

Q. It was since you made the demand on Natural, wasn't it?

A. Yes, sir.

Q. When did you first tell Natural that you were not getting from Natural the amount of money that you thought you were entitled to receive under the Commission's orders—in December, 1946, or in January, 1947?

A. Shortly after the Supreme Court of the United States entered its approval of the order.

[fol. 71] Q. I don't think you heard my question. When did you first tell Natural that you thought you were not receiving from Natural the amount of money you were entitled to receive under the Commission's order?

A. I'll have to refer to my letter and the date——

Q. You have it with you, do you not?

A. I think it's in the room. Yes. On January 15, 1951.

Q. Now, that was not,—that was the first time you ever told Natural either in writing or orally that Natural was not paying you the amount of money that you thought you were entitled to under the Commission's order in December, 1946, or January, 1947?

A. No, sir. I had previously had oral informal discussions as to the impact of this minimum price order.

Q. When?

A. I should say at various times over the last two years.

Q. You never did have anything in writing, did you?

A. No, sir.

Q. And you don't remember anything definite except discussing what the total impact all over might be, do you?

A. Also as to the effect on this contract.

Q. Now, when you first wrote them in January, 1951, it [fol. 72] was on a different basis of claim, injury, than you now assert, wasn't it?

A. On advice of our attorneys we simply revised the method of preparation of invoices.

Q. And you showed different volumes did you not?

A. Yes, sir, which was part of the invoice, of course.

Q. It wasn't on the theory that you should be paid for the amount of gas that went into the compressor station, was it?

Mr. Robinson: If Your Honor please, we object to this. I don't know that it makes any difference, but we are here concerned with what the correct theory is.

Chairman Bond: I think the order and contract speak for what is right rather than what he thinks they are.

Q. Well, this further question. At the time you filed your first statement, you did not make a claim based on seven cents for the volume of gas going into the compressor station, did you?

Mr. Robinson: We object to that for the same reason.

Chairman Bond: The Commission will let him answer.

A. We prepared a number of different invoices.

[fol. 73] Q. My question can be answered yes or no. You say that you sent it in January, 1951, and my statement is that at that time you did not make any claim on Natural of seven cents a thousand for the volumes of gas going into the compressor station, did you?

A. My recollection was it was 7½ cents at that point, because we thought the average was—We prepared different invoices and honestly I'm not clear.

Q. How many did you send to Natural?

A. I believe the original and then afterward they were withdrawn and we submitted a revised invoice on the advice of our counsel.

Q. That revised invoice was not sent until after this suit, this proceeding was instituted, was it?

A. I don't know exactly the date. I was out of the State when it was prepared.

Mr. Robinson: If Your Honor please, he's just taking up the Commission's time, and mine and everybody else's by asking about these things.

The Witness: As I understand we stand on this invoice and the exhibits, and that's all I know about it.

Q. You do not now know the basis on which the first statement you sent to Natural was prepared?

[fol. 74] A. No, sir, because I had no part in its preparation.

Mr. Culton: That's all.

Chairman Bond: Redirect.

Mr. Robinson: If the Commission please, I don't wish to waive my position as to what transpires with respect to the acts of the parties in the operation of this compressor plant as to whether the contract for the operation of the Compressor plant has anything to do with the controversy which is now before the Commission but due to the fact the Commission has let that in, why, I'd like to cross examine with respect to that.

Chairman Bond: You may cross examine with the understanding that you won't be bound by it. Your objections will still stand there, just the same.

Examination.

By Mr. Robinson:

Q. You were asked if you were a man of somewhat extended experience in the business of transporting natural gas, is that true?

A. Well, producing and processing of it.

Q. Can the gas in its raw state be successfully placed into lines and transported to Chicago or does it have to be treated first?

A. It has to be treated first.

[fol. 75] Q. The raw gas in the Guymon-Hugoton field, is it a commodity which Natural Gas Pipe Line Company could put into its pipe lines and immediately start transporting to Chicago?

A. Not in its existing design and pressures.

Q. So, then, if they go out there in that field now and enter into a contract for the purchase of gas at seven cents, will they have to enter into a contract with somebody to process that gas before they can take it in that line to send it to Chicago?

A. Either that or do it themselves.

Q. Then, this contract which provides for the processing of this gas,—you contracted to do that for them, did you not?

Mr. Culton: Just a minute. We object to that as being purely a legal conclusion.

Chairman Bond: The Contract is the best evidence.

Mr. Robinson: Well, then, he inquired whether or not under this contract they hadn't processed this gas, and I'm just cross examining now. You contracted, and this contract provided that you process the gas for them, doesn't it?

[fol. 76] A. Yes.

Chairman Bond: The contract is the best testimony.

Q. Well, what do you receive as compensation? Under the terms of this contract, what do you receive as compensation for this processing of this gas?

A. You mean to dehydrate, the dehydration of it for them?

Q. Yes.

A. We receive nothing.

Mr. Culton: Just a minute. We ask that that be excluded, because the contract is the best evidence, and the contract does not show that he does either of those things for us.

Chairman Bond: If the contract fixes the price the contract is the best testimony.

Q. They compress this gas in their compressing station, is that right?

A. Yes, sir.

Q. And they deliver it to you and to your plant?

A. Yes, sir, our two plants.

Q. And the contract permits you then to take out the various liquids from this gas?

A. The contract obligates us to do these things.

[fol. 77] Q. That's my point. It obligates you. Now, does the contract say, if you don't do it, what happens?

A. Yes, sir. The contract provides that they have the right to take over our facilities, operate them, and charge us any loss.

Q. Now, for your compensation for operating this plant what do you get?

Mr. Culton: Well, the contract is the best evidence.

Chairman Bond: The contract is the best testimony.

Q. Under the terms of the contract you have extracted,—you have performed the contract,—is that right?

A. Yes, sir.

Q. You have done those things to the gas pursuant to the terms of the contract, which the contract says you must do?

A. Yes, sir.

Q. And you have then, in turn, delivered that gas, which they have in turn delivered to you, back to them in their supply?

A. Yes, sir.

Q. And that is the only place where the gas has been metered?

[fol. 78] A. Yes, sir.

Q. How much compression loss they intimated that this compression was, for your benefit, of course, how much compression loss is going through this plant?

A. Well, the outlet,—there is only about five pounds. In other words, we dropped the pressure,—the pressure is at this time about 685 pounds when it enters our gasoline facilities and about five pounds less when it goes out, so we lose about five pounds out of the 685, in extracting the hydrocarbons.

Q. In other words, you lose actually about,—well, what, about what is the pressure when it enters the compressor plant?

A. About 250 pounds, I believe.

Q About 250. They boost it from about 250 to 685?

A. Yes.

Q. So there's a boost in there of——

A. About 400 pounds I would say.

Q. Around four hundred pounds boost, and there is about a five pound drop is all, going through your plant?

A. Yes, sir.

Q. Now, is there any other drop going through the dehydration unit?

[fol. 79] Q. Do you get anything out of the dehydration unit which is of value to you?

A. No, sir.

Q. That's a service that has to be performed on that gas before it's the kind of commodity that they can move in their lines?

A. Yes.

Q. Number 3, then, if they,—if you were not doing this, performing this processing, on this gas for them prior to the time it entered their lines could they use the gas and transport it to Chicago?

A. Well, somebody would have to. Either they would have to do it themselves or contract similar services.

Q. The service has to be performed before this gas can be delivered?

A. Yes, sir.

Mr. Robinson: I think that's all.

Mr. Culton: Just one or two questions, additional.

Examination.

By Mr. Culton:

Q. You referred a while ago to the fact that the boosting of the pressure of the gas in the compressor stations was for the mutual benefit of Natural and Panoma?

[fol. 80] A. I said the location of the plant, at the exhaust rather than the intake.

Q. That's what I intended to say.

A. Yes, sir.

Q. So far as Natural itself is concerned, it could just as easily and as conveniently and as economically use gas from, where its compressor station was at the discharge side of the gasoline facilities as it could from the suction side?

A. No.

Q. Why not?

A. You would have a higher compression ratio and it would cost you more money.

Q. It depends altogether on the pressure, does it not?

A. Well, we know what the pressures are.

Q. It is true, is it not, that one of the main reasons why you desire to have it at the suction side of your plant is because it is more economically to you to extract liquids?

Mr. Robinson: Now, wait just a minute, now. I think the contract is the best evidence.

Chairman Bond: Sustained.

Q. It is true, is it not, that it is more economical for you [fol. 81] to extract liquids where the pressures have been raised to six to eight hundred pounds than from where the pressures are only two hundred to two hundred and fifty pounds?

A. Yes, sir.

Q. And this loss in pressure, going through the,—to your system, is, I believe, never more than fifteen pounds?

A. No, sir.

Q. And in order to allow for that loss going through your plant, Natural increases the pressure of the gas in the compressor station to an amount which will permit then, a,—which will permit that reduction in pressure and still leave high enough pressure to use in its transportation?

A. Yes, sir.

Mr. Culton: That's all.

Mr. Robinson: Mr. Harrington, would you take a pencil, and on this exhibit number 11 mark the point at which you turn the gas over to the employees and to the properties and to the equipment of Natural Gas Pipe Line Company?

A. You mean for compressor usage?

Q. Just where is it that they take charge of the gas?

A. Oh, you mean,—I'll mark it point of custody.

Chairman Bond: The Commission doesn't understand [fol. 82] whether that was before or after it was processed.

Witness: That would be before, Your Honor.

Chairman Bond: Very well.

Mr. Robinson: I have no further questions.

Mr. Culton: Now, on that same chart, will you mark the point at which Natural re-delivers the gas to you?

A. I'll mark it point of Re-Delivery.

Q. All right. Now, Natural does not have the custody of it, of that gas, of any of that gas, during the time it goes through your extraction plant on through your dehydration plant, does it?

A. No, the gas travels about three hundred feet, through our facilities.

Q. Now, where is the last point that Natural gets custody of that gas?

A. Could I show that photograph?

Q. Can't you show it on that, just like you showed these other points of custody?

Mr. Harrington: Well, I think it's very misleading. The two points where the gas is taken out and processed or redelivered aren't five feet apart. You might think it was clear across the country.

Mr. Culton: I just asked you to say,—you may say [fol. 83] it's at this point, as you have,—you refer to the picture. I call your attention to the fact that the meter doesn't show on the picture.

A. No, but the point of egress and ingress does. I don't know how I can get it in the record, but I can show the Commission for what it's worth,—this is their compressor station. It goes into their custody here, and comes right back to this point and comes out. The point where it goes in and comes out are about five feet apart.

Q. But between the time it goes in and comes out it has gone through your facilities, which are shown on this photograph, Exhibit 10?

A. Well, a part of it. It just goes through these two towers.

Q. Are those towers a part of your extraction unit?

A. No, sir. They are part of our facilities.

Q. But if as a result of the extraction of those liquids it goes through the units?

A. No——

Q. It goes into Natural's compressor station at the point

marked Point of Custody and after the extraction of those——

A. Well, it's split up some.

Q. Now, you refer to the meter, the sale meter. That is [fol. 84] located on your property, is it not?

A. Well, yes.

Q. It's located on your property near the discharge of the dehydration unit?

A. Well, it's a way up here.

Q. Well, by here, I mean it doesn't go through anything between the time it leaves the dehydration unit and the meter?

A. Just your pipe line.

Q. Just our pipe line. Then the meter itself is on your property?

A. I don't know whether we sold you that or not,—it's on our fee.

Q. It's on your fee.

A. Yes.

Mr. Culton: That's all.

Chairman Bond: The Commission will recess until 1:30.

[fol. 85] At 1:30 p.m. the Commission was again in session and the following further proceedings were had:

[fols. 86-90] Mr. Robinson: If the Commission please, we'd like to introduce as Exhibit Number 12 a copy of the Commission's order Number 19514, being the Price Order issued in the Peerless case.

Chairman Bond: Any objections?

Mr. Culton: No objections.

Chairman Bond: Received.

Mr. Robinson: And as Exhibit number 13 a copy of an order granting supersedeas which was granted on Cities Service Application in that price case.

Chairman Bond: Received.

Mr. Culton: What order number?

Mr. Robinson: Order Number 19596.

Mr. Robinson: The Applicants Rest.

Chairman Bond: Very well.

Mr. Culton: We ask that Mr. Palmer take the stand.
Chairman Bond: Very well.

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[fol. 91] Leon L. Hoyt, called as a witness, having been first duly sworn, testified as follows:

Examination.

By Mr. Culton:

Q. You are a Public Accountant?
A. Certified Public Accountant.
Q. Certified Public Accountant. Where do you reside?
A. Amarillo, Texas.
Q. Is one of your clients the Panoma Corporation?
A. Yes, sir.
Q. Have you audited the books of Panoma Corporation for the period ending December 31, 1950, so far as the Oklahoma operations are concerned?
A. Yes, sir.
Q. Do you have with you the amount of those receipts, gross receipts, received by Panoma from liquid sold as results of this Oklahoma operations for the period ending December 31, 1950?
A. I do.
Q. What was that sum?
A. $1,308,682.02.
Q. I think you misunderstood the question. The question was the gross revenue from products for the period ending December 31, 1950?
[fol. 92] A. Well, I misunderstood your question. I thought you said the year ending.
Q. The period ending,—it would be 27 months. I'm sorry, if I didn't make it clear.
A. It would be $2,968,405.33.
Q. And do you also have the amount of money received by Panoma during that same period from the sale of residue gas as a result of its Oklahoma operations?
A. I do.

Q. How much was that?

A. $3,634,523.74.

Q. Do you also have the total expenses incurred by Panoma in connection with plant and gathering operations in Oklahoma during that same period?

A. I do.

Q. How much was that?

A. $1,602,280.04.

Q. Do you also have the total volumes of gas at 14.65 pounds pressure, which from your records entered the inlet of Natural's Compressor Station near Hooker, Oklahoma?

A. I have these figures which I have not verified, because I am not competent to verify them, but I have the figures which were furnished——

[fol. 93] Q. Give those. I think I can follow it up.

A. 70,992,632.

Q. Does that figure constitute the total of columns 2 and 3 of exhibit 8 down through December, 1950, does it not?

A. Yes, sir.

Q. You have accepted somebody else's interpretation as to how much it would be for fuel and shrinkage?

A. Yes, sir.

Mr. Culton: I'll state this to the Commission, that we have accepted the estimates made by Panoma as shown by their records as to the amount of fuel and shrinkage.

Q. And the total volume which you just gave, seventy million MCF and a fraction, is the sum of the item shown in column 4 of exhibit 8 from the, for the period 1948, 1949, and 1950?

A. Yes, sir.

Mr. Culton: That's all the questions we have with this witness.

Chairman Bond: Very well.

Mr. Robinson: Now, tehn, if Your Honor please, without abandoning our position that this inquiring into the amount of receipts and the amount of cost of operation [fol. 94] of the plant is wholly irrelevant insofar as this proceeding is concerned. Since the Commission has chosen

to let in their figures in respect to this, in support of the theory which they adopt, in this proceeding, we would like to offer rebuttal——

Chairman Bond: You may offer rebuttal without waiving any of your rights.

Mr. Robinson: There is before you now a compilation of figures which has been identified as exhibit number 14.

Mr. Hoyt: Yes, sir.

Examination.

By Mr. Robinson:

Q. That is a photostatic copy. What is that photostatic copy of?

A. Of a condensed analysis of actual and projected earnings of Panoma Corporation.

Q. Did you prepare the original from which this photostat is made?

A. I did.

Q. On the first page of this compilation there is shown the amount of receipts from the sale of plant products by months, is there not? I mean by years?

A. By years, yes, sir.

[fol. 95] Q. And there on is also shown the various costs, direct costs, which incurred in connection with the producing and processing products, those products, is that right?

A. There is.

Q. Now, the cost figure which you gave is taken from the cost figures which appear on this sheet, is that right?

A. Yes, sir.

Q. Do those include, sir, any allowance whatsoever for the money which Panoma has invested in this plant? By way of interest?

A. No, sir.

Q. Does it include any allowance for interest on money which is involved in the processing and financing this plant?

A. No, sir.

Q. Does it include any allowance for salaries to the officers of the corporation?

A. No, sir.

Q Does it include any allowance whatever as an earning or profit for ownership and management of the plant?

A. No, sir.

[fol. 96] Q. On the second page, just what is this analysis that you have there?

A. That's a condensed analysis of the information from the first page.

Q. On the number of thousand cubic feet delivered what is the amount per thousand cubic feet which you receive from sale of gas?

A. From these figures shown here .0512 dollars, or five and 1.2 cents.

Q. And then the total plant receipts less the costs for the operation of the plant, leave you this figures of $1,366,125.29. Is that right?

A. Yes, sir.

Q. How much is that per thousand cubic feet?

A. It's .0192. cents.

Q. .0192?

A. Yes, sir.

Q. Those figures totaled indicate how much of this, this applicants receives in respect to this gas then, per thousand cubic foot?

A. .0704 cents per MCM.

[fol. 97] Q. Now, does that figure, .0704 allow them anything whatever for investment in that plant property?

A. Depreciation only.

Q. In the computation which you have made it simply means that they would get their money back, is that right?

A. Yes, sir.

Q. It doesn't mean that they have assurance that any figures shown here are interest on the money invested?

A. No, sir.

Q. There are no figures shown for interest on money borrowed?

A. No, sir.

Q. There are no figures shown here for an allowance of salary management, management to the officers of the company?

A. No, sir.

Q. Is there any figure shown here which would include any reasonable allowance for plant property?

A. No.

Q. There's a third page to this exhibit. What does that show?

A. This is an analysis of what earnings would be made if allowances were made for interest paid, for six percent [fol. 98] profit on plant or a ten percent profit on the plant separately.

Q. Under number 1 allowance is made for the interest paid. Does that have reference to actual interest which these applicants have paid on their money?

A. Yes, sir.

Q. This is a figure which they actually did put out. They paid this number of dollars for the use of the money which went into the plant, is that right?

A. That is correct.

Q. Now, if you add that amount to this figure, or does the amount which they have received for gas and product sales total seven cents? I'm interested in the,—deduct also the cost of that interest, which is the result?

A. It would be necessary to receive 7½ cents, to be received, according to the other calculation .704 cents, so that we did not receive enough to take care of this by .0046 cents.

Q. Then, you lack .46 of a cent per thousand cubic feet of realizing the seven cents, after you deduct this interest factor?

A. Yes, sir.

Q. Now, then, if you would allow six percent plant [fol. 99] profit, what deficiency would be there?

A. There would be .0089 cents.

Q. That's a .89 percent if you would realize a six percent profit on that plant?

A. Yes, sir.

Q. Now, then, if you had a ten percent profit on the plant, would,—what would the figure be?

A. The deficiency would be 1.48 cents per MCF.

Q. And if you had twelve and a half percent on the plant, what would the deficiency be?

A. 1.85 cents per MCF.

Q. And if you allowed for 16 and 2/3 percent profit on your plant investment, what would it be?

A. 2.47 cents per MCF.

Q. And a twenty percent allowance on your,—profit on your plant investment, what would it be?

A. 2.93 cents per MCF.

Q. Now, behind this, behind those pages there are some pages which you call references, what are those references?

A. They are the references from which this data was prepared.

Q. In other words, by taking these references you can [fol. 100] refer to the Company's books and get the figures which you have shown on this?

A. You can refer to the auditor reports which were taken from an audit of the Company books.

Mr. Robinson: We now offer in evidence Exhibit number 14.

Chairman Bond: Received.

Mr. Culton: We understand that discussing of philosophy comes in arguments and briefs, not in the offering of tabulations. Of ourse, we don't think the last portion of the exhibit will be pertinent, but as I stated, we understand that philosophies are matters of discussion of briefs, and not in the introduction of evidence.

Chairman Bond: W*e* admitted this on the theory that you were claiming other profits besides the five cents.

Mr. Culton: That's correct, but our point is that as a matter of law, those last items that they show*n*,—the theoretical situation refer- to matters which are not taken into consideration, which is *a* matter for briefing. We object to them on the grounds of immateriality, Your Honor, but realize that the Commission can determine the [fol. 101] materiality at the same time it determines the weight.

Chairman Bond: The Commission will receive them for what they are worth.

Mr. Robinson: I have no further questions.

Examination.

By Mr. Culton:

Q. Now, Mr. Hoyt, Counsel referred to some matters which are not reflected. Your statement does not reflect the unsold liquids on hand on December 31, 1950, does it?

A. We have included them in income in these figures, even though they were not sold.

Q. On which figure is that?

A. The December 31, 1950, for that twelve months; we have gross revenues from plant products included at $1,308,682.02; we have products on hand, unsold, in the amount of $74,010.11.

Q. Was that true as to former years also?

A. Well, at the end of each year there would be an inventory that would be included, but of course they would be sold in the succeeding year.

Q. Does the item of $1,308,862.00 represent plant products which were unsold as of December 31, 1950?

A. Yes, sir.

Q. Now, there is an error with respect to a drilling rig [fol. 102] in those figures, is there not, that got into the records?

A. That's correct.

Q. And it amounts to about how much?

A. Some three thousand dollars.

Mr. Culton: I believe that's all.

Mr. Robinson: That's all.

The Witness Was Excused.

Mr. Culton: If the Commission please, we'd like to offer as a part of the record a copy of Order Number 19702, which was the interpretative order of 514. I am sure there will be no objection to that.

Mr. Robinson: I have a copy here of 19702. There is an error, however, in this copy.

Mr. Culton: Well, the error is obvious.

Mr. Robinson: Yes, it's obvious in context.

Court Reporter: Said order was marked Exhibit 15.

Mr. Culton: Now, if it was not done at the time these exhibits were identified we would like to make a formal offer of all of the exhibits.

Chairman Bond: Very well. Received.

[fol. 103] W. F. MATHENY, called as a witness, having been first duly sworn, testified as follows:

Examination.

By Mr. Robinson:

Q. What is your name, please?
A. W. F. Matheny. M-a-t-h-e-n-y.
Q. By whom are you employed?
A. Richardson Gasoline Company.
Q. Where is its office?
A. Fort Worth.
Q. How long have you been with that company?
A. Almost four years.
Q. Who were you previously employed?
A. Phillips Petroleum Company.
Q. What was your capacity? What sort of work were you connected with?
A. When I left I was Assistant Manager of the gas Department and in charge of the gasoline operations.
Q. What has been your work with your present employer?
A. Substantially the same thing, including other related items.
Q. How many different things do you suppose that you have had occasion to become acquainted with prior to the time the gasoline plant has been operated?
[fol. 104] A. I would say fifteen or twenty.
Q. You are now quoting your experience with Phillips and with your present employer?
A. Right.
Q. About what sort of a figure for plant profits would have to be envisioned before they would be willing to build such plants?

Mr. Culton: We object to the question as being wholly immaterial.

Mr. Robinson: I have qualified him as a witness who has had a lot of experience with gasoline plants. I want to prove now that they always expect profits from plants when they build them.

Chairman Bond: The Commission doesn't guarantee anybody a profit but the Commission probably misunderstood at the beginning of the case. We thought they were to make enough money out of this processing in order to raise the percentage up from five and a fraction to seven.

The only thing this Commission has undertaken to do, and it's only the present order, is to get them a minimum price for gas, for the constituents of the gas. Suppose a man would make a contract with you for five and a fraction and [fol. 105] he would try to realize something out of some other process in order to make this seven and a fraction and he would lose money, what would happen then?

Mr. Culton: The only thing that this Commission has tried to do is to get them a minimum price for the gas, and they get it from the total receipts from the liquid plus the total receipts from the residue, which amount to nine and a fraction cents, and then the cost to them of separating those two has been such as to make their net realization to .0704.

Chairman Bond: Suppose he claims he's operating at a loss?

Mr. Culton: He may be operating his entire business at a loss, but if he is getting for the constituents of this gas that price, then——

Chairman Bond: Let me say this, though. Suppose you're paying him five and a fraction for his gas. And suppose you say he's going through some process with this gas whereby he's receiving seven, or the Commission price for it. And suppose he'd say, "No, I'm losing money. I'm not making that." Then, what could the Commission do in order to see that this gas was sold for seven cents?

[fol. 106] Mr. Culton: See that the expenses of separation not give him a profit. He might never get a profit on the plant and yet the proceeds of this property, the proceeds of the constituents of the gas less the cost of the separation,

whether he got a profit on this, on his gathering system, whether he got a profit on his plant, is not material. How much does he sell the constituents of that gas for after separating it into its constituents?

Chairman Bond: Suppose he said to you, "I'm just going to charge you seven cents straight for gas. We won't have any processing." What could you do then?

Mr. Culton: If he'll do that he'll find us taking him up right now. For this reason. In the long run they get a whole lot more than they've gotten the last two or three years. The price of gasoline has been a little low, but you take the price of gasoline during several other years, it went up as high as eight cents, then he would be getting eight, nine or ten cents for the gas, maybe. As a whole, in the long run, they may get more. That's one of the business gambles that they take. If we were to participate when the price of gasoline goes up——

Chairman Bond: You couldn't participate because you [fol. 107] have no interest in it.

Mr. Culton: I beg your pardon.

Chairman Bond: I say you can't, though, because you have no interest in the plant, can you?

Mr. Culton: No, because——

Chairman Bond: If you could you'd take over the plant.

Mr. Culton: We'd take that plant and operate it.

Chairman Bond: And sell the gas straight at seven cents. Now, how much would you pay him for a plant that's paying seven cents?

Mr. Culton: We'd pay him exactly what it's on his books for.

Chairman Bond: Well, I think, then, he'd be entitled to show what it's on his books for.

Mr. Robinson: Is this right, that you will purchase our plant?

Mr. Culton: Yes, at the depreciated value shown on the books.

Mr. Robinson: Then, will you pay us seven cents for our gas?

Mr. Culton: Less the cost of gathering it.

Chairman Bond: You men may sell and buy. The

[fol. 108] Commission is going to hear all this testimony. We'll give you an exception.

Examination.

By Mr. Robinson:

Q. What is the lowest profit figure builders and operators of the plant have ever known to be taken into consideration in the building of one of these plants?

A. I have never been a party to one that's paid out in ten years, but I understand it has been done.

Mr. Culton: Just a minute. We object to that and ask that it be excluded because not responsive.

Chairman Bond: Sustained.

Q. When these various people that you know that built these plants and remodeled those other,—or built fifteen and remodeled fifteen when they sit down and determine whether or not they're going into the project or not. What is the lowest profit figure which you have ever known to be taken into consideration in connection with the building of one of these plants?

Mr. Culton: We object to that as a, because it's an improper basis for determining their basis for payment even if they're entitled to it.

Chairman Bond: The Commission thinks the question is irrelevant, but we'll hear the answer. The Com-
[fol. 109] mission thinks that probably you ought to limit your testimony to the profit of the plant in question, but we'll hear the testimony.

Q. Well, all right. You may first answer that.

A. The usual yardstick is five year payout.

Q. It is——

A. Being extended, however, maybe for unusual circumstances in respect of constant volume and long reserved life.

Q. Tell me, sir, you have been in on a lot of these computations,—tell my why the operators ordinarily are not interested unless they think it will pay out in about five years?

A. There are too many exigencies connected with the

business. You never know from day to day what your volume through the plant is going to be. You can lay out a beautiful set of speculations as to volume, gasoline content, and particularly prices. And you assume that you are going to sell it. You do not know,—I would suggest that you have already found that you are not putting through that plant as much as you thought *t*you would; you are not getting the price for your product that you thought you would get and in many case you burn [fol. 110] your propane and butane and don't sell it at all. But you have to use your best judgment, for a long range term in front of you.

Q. What would be a reasonable profit allowance for a plant of this kind which is operated in this field and that has a connection here with the Natural Gas Pipe Line Company for the gas which results after extraction?

Mr. Culton: Just a minute. For the record we object to that question, because the witness hasn't shown himself qualified to answer. On the contrary, he has shown affirmatively that he is not qualified to answer the question. That in addition to my former objection on materiality.

Commissioner Jones: Can you qualify him further?

Mr. Robinson: Well, he's qualified here. He said he has talked with I don't know how many people who are familiar with these plants, their operation, and understand what profits you have to realize in order to stay in business.

Commissioner Jones: Are you acquainted with this plant?

A. In general with this plant, and with several very similar to it in particular.

[fol. 111] Commissioner Jones: You may answer.

Q. What sort of allowance for profit do you think there ought to be in connection with the operation of this plant?

A. I will say that the very minimum, at least ten percent after the depreciation.

Q. That's ten percent——

A. Net profit, after depreciation.

Q. Net profit after depreciation.

A. And I'd take a long look at it before I'd put my own money in it that way.

Mr. Robinson: You may cross examine.

Examination.

By Mr. Culton:

Q. What experience have you had with respect to the construction, advising the construction of the plant where all the gas going into the plant belonged to the person constructing the plant and he had a contract for a twenty-year period for sale of all of the gas, all of the residue gas?

A. I have been in on several like that.

Q. Where? Who?

A. That Phillips Petroleum had.

Q. And Phillips Petroleum Company had a sale of all of the gas, and you recommended that they not make that deal [fol. 112] unless they had a payout in five years?

A. Ten years would be the absolute limit.

Q. And you recommended to them that they not go into it if they didn't get it a payout in ten years?

A. I sure would.

Q. Well, did you?

A. Yes.

Q. Do they charge depreciation?

A. Yes. No, you couldn't get Phillips to build a gasoline plant on a ten-year payout.

Q. You couldn't.

A. I'm talking about payout after depreciation. No, you couldn't get Phillips to build a gasoline plant on a ten year payout.

Q. You couldn't?

A. No, I don't think you could. Unless for some other reason than the investment in the plant.

Q. Do you know how much the Northern Natural Gas Company was allowed by the Federal Power Commission as a return on its gasoline plant?

A. Six to six and a half percent, isn't it?

Q. Do you know how much Panhandle Eastern was allowed?

A. Oh, they are all allowed the same, are they not?

[fol. 113] Q. When was this deal that you recommended to Phillips Petroleum Company that they not go into it unless they got a ten-year payout?

A. I never recommended a deal to them that was a ten-year payout.

Q. When did you make your last recommendation to them?

A. In the Spring of '47.

Q. For the construction of which plant?

A. That I do not recall. There were usually ten or fifteen tank jobs going on all the time.

Q. I know, but we are talking about a specific plant where the Company had a market for the residue gas for twenty years as soon as all the liquids were extracted, and it owned all the gas that was going into that plant, and you recommended that they not build it unless they got a ten-year payout.

A. I did not. I said I never recommended a plant job that would not pay out in ten years.

Q. My question is, do you know how many leases were tied to that plant, dedicated to that plant, with the residue dedicated to a particular purpose over a twenty-year period? When was the last one you recommended to Phillips?

A. In the Spring of '47.

[fol. 114] Q. And where was it?

A. I don't recall.

Q. Do you know how much gas was under contract to that place?

A. Do you want me to take a particular example?

Q. Whatever place you are talking about, in 1947.

A. I made that recommendation in 1947 to my present company.

Q. About which plant?

A. Keystone.

Q. Where is Keystone Plant located?

A. Texas. West Texas. Permian basin.

Q. Is that a gas area or a casinghead gas area?

A. Casinghead gas area.

Q. That was casinghead gas there, wasn't it?

A. Right.

Q. And you know that casinghead gas is not likely to last for any ten years, don't you?

A. That's right.

Q. You know that ordinarily casinghead gas does not last more than five to ten years?

A. Up to the days of proration they usually last longer than that.

[fol. 115] Q. But you are not talking about an absolute dedication of the full capacity of the plant for twenty years, were you?

A. No.

Q. And how about the residue to that plant?

A. It's sold to El Paso.

Q. At what price?

A. Seven cents.

Q. On what pressure basis?

A. 16.4.

Q. On 16.4. Any sweetening to do?

A. No, sir, it's sour.

Q. You don't sweeten your gas?

A. Do not.

Q. Do not sweeten your gas. It goes into your line as sour gas?

A. Right.

Q. And do you know how long Phillips has engaged in furnishing absolute quantities of gas under that contract?

A. That's not Phillips. That's my present operation itself.

Q. Oh, that's your present operations. Your company's present operations does not have any instance where it is [fol. 116] extracting liquids from natural gas, does it? Only from natural gas?

A. Substantially correct.

Q. Well, why is it not absolutely correct?

A. We have a little natural gas, well pressure gas.

Q. Practically all of the gas going into it is casinghead gas?

A. Yes.

Mr. Culton: I believe that's all.

Examination.

By Mr. Robinson:

Q. While you were with Phillips you helped go over a lot of plans for processing natural gas?

A. All the Hugoton plants and Moore County plants, of which,—well, Guymon, Oklahoma is a good example of that well pressure plant where Phillips had a gathering system, long term contract on the gas. The gas going in that case to Panhandle Eastern. And in the design, the building, the operation, the payout and everything else was very similar.

Mr. Robinson: That's all.
The witness was excused.

[fol. 117] T. MacDonald Biddison, called as a witness, having been first duly sworn, testified as follows:

Examination.

By Mr. Robinson:

Q. Mr. Biddison, where do you live?
A. Tulsa, Oklahoma.
Q. What is your business, sir?
A. Consulting Engineer, oil and gas work.
Q. How long have you been in oil and gas work?
A. In consulting work since 1928. I have been engaged in engineering in the oil and gas industry since May 20, 1905.

Q. Now, are you a member of any group of societies of professional persons concerned with this subject matter?

A. Yes, I'm a member,—I'm a fellow in the American Society of Mechanical Engineers; I'm a member of the American Institute of Mining and Metallurgical Engineers; I'm a member of the Association of Coronal Engineers; I'm a member of the American Gas Association, Pacific Gas Association, and Southern Gas Association; I'm a licensed Professional Engineer in Oklahoma, Texas, Illinois, and the Province of Alberta, Canada.

Q. How many gas fields have you had occasion to examine from the standpoint of possibility of construction of gaso- [fol. 118] line plants, possibility and feasibility?

A. Fifteen or twenty.

Q. How many gasoline plants, sir, have you conferred with clients on prior to their construction?

A. About the same number.

Q. How many different companies, do you suppose, sir, that during that period of time you have conferred with with respect to the possibility of construction of gasoline plants?

A. Probably two or more.

Q. Have you been furnished any facts and figures with respect to the operation of this plant out there in the Guymon-Hugoton Field?

A. I have.

Q. What facts and figures were made available to you, sir, in respect to that computation?

A. The condensed analysis of actual and projected earnings, the tabulation which is exhibit 14 in this case, Corporation of Oklahoma operations, which is exhibit 14 of this case. A tabulation of Revised Receivable,—Natural Gas Pipe Line Company under Oklahoma Corporation Commission Price Orders, exhibit 8 in this case, and some additional figures which have been furnished to me by [fol. 119] Mr. Hoyt and that are records in this case.

Q. Did Mr. Hoyt, the auditor, make his computations from the Company's books?

A. That's right.

Q. Did you have furnished to you any figures concerning the volumes of gas which have passed through the plant during the period of time involved?

A. I *H*ave. Those figures available from exhibit number 8 and exhibit number 14.

Q. Have you had available the amount of the investment which the applicants in this case have in the gasoline plant?

A. I have; those figures were furnished to me by Mr. Hoyt.

Q. Have you had made available to you the amount of liquids which have been extracted during that period of time?

A. I don't know that I have the gallons of liquids. I have the receipts therefrom.

Q. The amounts for which those liquids were sold?

A. That's right. No, the accruals, whether the sales were actually consummated or not.

Q. In other words, all the amounts accrued through [fol. 120] sales from liquids up to December 31, 1950.

A. That's right.

Q. Have you been asked, sir, to analyze the operation of this plant and the realization of profit from operation of this plant?

A. Yes, sir.

Q. Have you made such an analysis, sir?

A. I have.

Q. Do you have that analysis with you?

A. I do.

Q. You have before you an instrument which has been identified by the Reporter as Exhibit 16. What is that a photostatic copy of?

A. It's a photostatic copy of a computation headed on the first page "Panoma Corporation—Cost of Service—Gathering and Treating." It consists of four pages.

Q. Now, before we get into the detail on the first page what is the second page?

A. The second page is an earning analysis and at line 20 is a determination of net invested capital at the end of the year 1950.

Q. In other words it's a determination of the amount which they now have invested in the plant,—is that right? [fol. 121] A. Yes, sir. An estimate less my estimate of the proper reserve balance.

Q. Now, what is shown on the third page of this exhibit?

A. Third page, "Panoma Corporation—Estimate of Working Capital" is my estimate of the amount of working capital employed in the plant gathering system,—the amount is shown on page 3, line 12.

Q. Now, what is shown on page four?

A. Income; this is my estimate of the Depreciation Reserve Accrual and Reserve Requirement, for the years 1948, 1949, and 1950, being my estimate of the amount of accruals that would have been made during the years 1949, 1950 and

1951, reserve balance which would have been proper for the accruals at the close of the year 1950.

Q. Sir, in light of your experience with the construction and the investment involved in the construction of gasoline plants, of the kind which is the subject of the present controversy, what would you say that a reasonable, prudent operation,—operator would expect by way of investment out of such a plant before he might be enticed to construct such a plant?

A. Well, I feel sure that an investor would require a minimum net return, after income taxes, accruals, depreciation reserve, of not less than 10 or 11 per cent.

[fol. 122]

Q. From the study which you have made of the actual operation of this plant, what in your opinion is the amount which Panoma might expect to realize out of its operations of its gasoline plant? Would that be a reasonable estimate with respect to Panoma's plant out there at the present time? That's what I mean.

A. I should say ten percent.

Q. Does this computation show whether or not the total receipts that they are now receiving, both from the sale of gas and from plant products, whether or not that is realizing them eleven cents with respec- to this plant operation?

A. No, this exhibit itself doesn't reflect that, now receiving both from the sale of gas and from plant products.

Q. Without referring to the exact place on the exhibit where you got it, are all these figures which you show here reflected on the exhibit which is already in evidence?

A. All of them are not.

Q. Which ones are shown on this exhibit?

A. From lines 1 to 8.

[fol. 123]

Q. Are shown on that exhibit?

A. That is correct. Line 9 is my own determination, coming from page 4 of my exhibit 16.

Q. That is the Depreciation accrual?

A. That's right.

Q. Now, let's explain how you,—let's turn to page 4 and explain how you arrived at that depreciation accrual.

A. On page 4, line 1, are shown the investment figures at the close of the year, for extraction plant, lease lines and gathering system. At line 2 is shown the amount of depre-

ciation accrual against those, at a five percent rate. Beginning at line 4, down to line 11, I listed the values at the close of 1950, according to the books of other property, eighty percent of which is estimated to be allocable to the service of the Extraction plant, lease lines and gathering system. On those items of property I have accrued depreciation which on the total amount of thoese journal items at .7428 percent. Therefore, for their values at the close of '49 and '48 I have computed at line 12 the accrual at the rate of .7428 percent. Since eighty percent are allocable to the plant in question I have taken eighty percent of the accrual, for the years following the column where the amounts are [fol. 124] shown. At line 13 is shown the sum of the accruals for the main plant shown at line 12 and of the accruals for the general at line 13, giving a total of accruals for the year following the column in which the amounts are shown. Beginning at line 17 then I have built up the reserve requirements for the close of the year 1950. That reserve requirement for the year 1950 is $456,887 plus, while the amount shown at line 15 is $240,023 plus. That last figure being shown at page 1, line 9.

Q. Have you followed the ordinary practices in determining the amounts which would be a reasonable accrual in respect to a plant of this type,—is this the customary manner of determining the figures which you have arrived at?

A. It is. There are other manners but this is the customary manner.

Q. Is this the one you use when you are making estimates for your clients?

A. Yes, sir, it is the one I now use. I have not always used this method, but I have been doing so for a number of years.

Q. Well, is it a fair method?

Mr. Culton: The Commission will pass on whether it's [fol. 125] a fair method.

Q. Let's go back now to that,—you have there,—that is an explanation from line 9 on page 1. Is that right?

A. That is right.

Q. Now, what is line 10?

A. Line 10——

Q. On page 1.

A. ——on page 1 is the estimate of return at eleven percent on the net invested capital at the end of 1950. And that net invested capital is determined on page 2.

Q. All right now. How have you arrived at the net invested capital?

A. At the close of 1950, as shown on line 5, the gross investment in the extraction plant, lease lines and gathering system, was $4,372,679 plus. The general property allocable to the same service, shown on line 15 was 287,956 dollars plus. The working capital required as shown in my estimate on page 3, which I will explain later, is $119,896 plus, shown at line 17, which leaves a gross invested capital at the close of 1950 of $480,532 plus, and the estimated reserve requirements shown at line 19 and coming from line 20 of page 4 was $456,887.00 plus, leaving net invested capital of $4,323,645 plus and eleven [fol. 126] percent *and eleven percent* on that as shown on line 10 of page 1 is $475,600.98. I think at this point I should explain the working capital.

Q. All right.

A. That's on page 3.

Q. Yes, sir. Now, how is that arrived at?

A. The first item comes from exhibit number 14. Now, that's shown at line one on my tabulation. It is shown between lines 3 and 4 on exhibit 14. The second item comes from line 2 of exhibit 14. Selling expense and general administrative expense, blending stocks and additives and processing fee, also come from Exhibit 14. Those items total $409,641 plus, as shown at line 8. One-eighth of that amount is $51,205.17. This represents case that needs to be available for operations in order that the business might be conducted until income was established. I have added to that at line 10 an item of materials and supplies.

Mr. Robinson: To keep on hand.

A. To keep on hand. Now, if that $68,691 plus $8,694 plus was blending stock on hand at the close of 1950 the balance in that item, fifty thousand dollars, is that part of $76,594 plus, which I am advised by em-

[fol. 127] ployees of Panoma Corporation are attributed to the operation of the processing plants, lease lines and gathering lines so that leaves a working capital item of $119,896.00 which I have used in my determination as a base of, as a base for earnings.

Q. In your opinion is that a reasonable allowance for working capital?

Mr. Culton: Just a minute. That's for the Commission to pass on.

Mr. Robinson: He's an expert.

Mr. Culton: I know, but an expert can't testify to what's reasonable. He can testify to what — usual and ordinary.

Mr. Robinson: All right, usual and ordinary, if you like that language better.

Q. is that a usual and ordinary amount to be allowed for operating capital for a plant of this size and class doing the type of operations that this one is operating?

A. It's much less than the usual requirement, but is in line with what has been the practice in allowance for such matters for the determination of rates for service by regulatory bodies.

Q. All right, sir. Now, returning again to your com- [fol. 128] putation on page 1. You say that a return of eleven percent on net investment capital is the figure which you have at the right hand side of the page, on column 10? Is that right?

A. Yes, sir.

Q. That means eleven percent of the total amount which they have to have invested?

A. That's right.

Q. Now, when you say eleven percent on net invested capital, do you mean eleven percent to the operators or eleven percent of net income before taxes?

A. That's eleven percent net after taxes. And after Federal income taxes.

Q. Eleven percent left after tax. All right, sir, what would the total figure, then, be, if, in order to make allowance for the taxes,—well, what figure have you——

A. Well, it'd be just about fifty percent more than that,

which would be about five and a half, 16½ percent, before tax.

Q. In other words, a third of the total income would be,—you just figure exactly a third, is that right?

A. I was figuring income tax, the lowest computation, would be about a third of the return trust tax, which makes [fol. 129] one-half of the tax.

Q. One half of the return?

A. One half of the return, pardon me.

Q. All right, then, what is the total cost of the service?

A. The total cost of the service shown on line 12 is $1,392,836 plus. The delivery during the year 1950 measured at 14.65 was 33,541,148 MCF and the division of line 12, by that quantity of gas shown at line 13 reduces the figure of .04153 per MCF at line 14.

Q. Now, how does that compare, sir, with the amount which is realized out of plant sales?

A. During the 1950 the receipts from the sale of products was $1,308,682.02 receipts for the sale of gas during that year, $1,711,386.23. The total being $3,020,068.25. This on 33,541,148 MCF amounts to .09004 dollars per MCF.

Q. Well, if you subtract that from the figure you have here how much are they short on realizing this plant profit, you say?

A. Subtract that figure from line 16 on page 1, leaves a deficiency of .02049 per MCF.

Q. What did you say,—.02?

A. Yes, a little over two cents.

[fol. 130] Q. Then they lack two cents per thousand cubic feet of realizing on the present payments which they are now receiving what you would conceive to be a proper allowance for plant profit?

Mr. Culton: Just a minute. We object to "proper allowance."

Commission-- Jones: He can say what his personal opinion is.

Q. Well, what in your opinion would be a reasonable and ordinary allowance for plant profit in respect to this type operations? Is that the figure you used?

A. Eleven percent is our estimate.

Q. Then, you say they lack two cents of realizing a reasonable and ordinary allowance for plant profit?

A. For such a plant, yes, sir.

Q. In your experience do you know of anybody who has ever built a plant solely to recover their money through depreciation?

A. No.

Q. If gas is worth seven cents at the well head, if as a result of the sale of both gas and the profits realized out of the operations of the plant they are recovering an average of 7.04 cents per thousand cubic feet, that in [fol. 131] effect is simply saying that all they're doing is planning their investment returned through depreciation, is it not?

A. That is true.

Q. There is not in that figure, then, any allowance for salaries of the officers of that corporation, is there?

A. That is correct.

Q. Is there any allowance in that figure for the money which they have borrowed to invest to make this investment?

A. The tabulations shows there is not.

Q. Does,—that 7.04 cents does not make any allowance whatever for any investment in respect to this plant?

A. That's correct.

Q. How much do these parties have invested out there approximately?

A. Four million and something.

Mr. Culton: You don't mean that?

A. I mean that.

Mr. Culton: No. Read that again. That's the gathering system and all the rest of the stuff in that $4,000,000?

A. Yes.

Mr. Culton: You said "plant."

[fol. 132] A. I didn't say extraction plant.

Mr. Robinson: May I inquire if this cross examination?

Mr. Culton: Well, I'm just dumb,—I didn't know but what he meant what he said.

Mr. Robinson: You'll have an opportunity to cross examine him.

Q. In your experience in the oil business when you talk about a well head drive, gas is subsequently to be marketed at some remote point and something has to be done to make it marketable,—how do you determine what the well head drop is?

Mr. Culton: We object because it is not a matter for a witness to give an opinion on,—we are talking about an interpretation of the Commission's order here.

A. The only way in which I could conceive it could be done would be to deduct the cost of service between the point of sale and the wellhead.

Q. And if you,—if you're talking about seven cents at the wellhead you'd add that to determine what there would have to be for realization at this other point. Is that right?

A. That's right.

[fol. 133] Q. And if you got the price up here yo-'d deduct the cost of service going back the other way to determine what you're actually receiving as the well head price?

A. That's right. You'd have what constitutes the service cost of rental on money.

Q. All right. Under the circumstances which here exist, payments which are now being made, what would you say is being paid Panoma Corporation as a well head price for this gas?

A. .04851. per MCF.

Cross-examination.

By Mr. Culton:

Q. What did you find the cost of money to Panoma to be?

A. I didn't investigate it.

Q. Under your method of computing you are assuming that this company would be guaranteed so much money every year?

A. No, I didn't make such an assumption as that at all.

Q. You don't think they should be guaranteed that much, do you?

A. No, I don't think anybody should have a guarantee. I think they should stand the vagaries of the——

Q. And it wasn't your idea that they would have a price under any and all circumstances equivalent to give them an 11 percent return on their investment plus all of their [fol. 134] income tax attributable to, from that operation?

A. Well, I didn't go into such matters as that.

Q. You referred to rate cases. What rate case have you ever been in where the operator of an extraction plant was allowed eleven percent return on his investments plus his income taxes?

A. I never saw a rate case involve that kind of a piece of property.

Q. You never saw any such situation as now exists before any regulatory body, did you?

A. That's right, I haven't.

Q. No, the appropriate way to determine cost of service would be in the same manner it is determined in a rate case.

A. That's right. I haven't.

Q. Now, you can assume that the appropriate way for determining cost of service would be in the same manner it is determined in a rate case, isn't it?

A. I think that's the proper way to do it.

Q. Do you know of a single instance where, in a rate case there has been an allowance of 11 percent return on the investment after income taxes, do you?

A. No, sir.

[fol. 135] Q. The running of the liquids through the plant, running of the raw gas through the plant is the method by which they realize the total constituents of the raw gas. You know that's true, don't you?

A. Yes.

Q. Do you know of a single instance where a contract has been entered into where gasoline, or liquids are extracted under a contract where the contract has been set up as the situation of the Panoma?

A. Where the contract has been——

Q. But you don't know of any contract that has been ever entered into by anybody where the owner of the plant was processing the liquids on the basis that you are using in your exhibit?

A. I don't understand your question, Mr. Culton.

Q. Well, you and I have faced each other many times, and you do not know of a single instance where any operator of a processing plant has agreed to extract liquids on a basis of compensation such as you have set up in your exhibit? Is that true?

A. Yes, I do.

Q. Where?

A. Phillips did with Michigan and Wisconsin.

[fol. 136] Q. Phillips did not enter into any contract with Michigan and Wisconsin for the extraction of that gasoline. There is no contract involved in the extraction of gasoline by Phillips before the residue gas was delivered?

A. Oh, sir, there is a contract that has to do with that.

Q. That contract is similar in many respects to the contract between Panoma and Natural, isn't it?

A. That's right.

Q. Now, in your investigation what price for gasoline did you assume for the year 1951 as shown on your exhibit, page 1 of exhibit 16?

A. I never assumed the price of the gasoline.

Q. Well, you know the price of gasoline was,—there was a period of time, say, about '46 or '47 when the price of gasoline was five or five and one-fourth cents and later it dropped to a lower price during '49 and '50 don't you?

A. Yes, that's true.

Q. You know that Phillips has extracted liquids from Pa-handle Eastern's gas at forty percent, don't you?

A. Yes.

Q. All right. Phillips hasn't lost much money on that [fol. 137] basis that you know of, have they?

A. I don't know how they came out on that deal.

Q. But you don't know of any place where a contract has been made of the type represented here?

A. Well, yes. I know of plenty places where this method of fixing payment is used. It's the Regulatory body method in rate adjustments.

Q. But they do not show eleven percent return, do they?

A. No, but they show a percent return, which is net after depreciation and after income tax. There's a net rate on the net investment.

Q. And in those instances it's important to take into consideration in considering the net return to be allowed the ease with which the regulated company is able to borrow money, isn't it?

A. Well, sure.

Q. Do you know any regulated Company having eleven percent on its gasoline extraction or on any other facilities?

A. I don't know that I do.

Redirect examination.

By Mr. Robinson:

Q. Sir, he has directed you a line of inquiry that would indicate that eleven percent might be an unreasonable [fol. 138] rate of return to a utility. Is the reason you are using eleven percent here because they do not have a guaranteed rate of return as a utility might?

A. No, a utility can only be said to have a guaranteed rate of return in the sense that they have a guarantee right to try and get it allowed.

Q. Giving some slight consideration or certainly some consideration to the risk involved in building a plant like this out there, from your experience, is the rate which you have selected ordinarily a rate in respect to what might be expected from a plant during a year like last year?

A. Last year.

Q. And if an allowance is made,—if I understand you right,—if an allowance is made to them, for a return of operating their plant, if they're paid in the manner provided in this contract, if they are only realizing .04851 per cubic feet as the well head price?

A. No. That is not the right figure. That figure is the cost of service.

Q. Well, maybe that's it. What is the figure? I've forgotten.

A. Well, they are realizing nine cents less 4.15 cents, [fol. 139] or 4.85 cents at the well head.

Mr. Robinson: That's all.

Mr. Culton: This further question. Have you checked the capacity of the gathering lines?

A. No, sir.

Q. Do you know whether they could take two or three times that much gas through the same gathering lines?

A. It would depend altogether on the pressure at which the lines are operated.

Mr. Robinson: Well, I think that's irrelevant. There is no indication that there is any possibility of that much gas. If you wish to ask him on the hypothesis that there is going to be that much gas,—do you want to ask him that question?

Mr. Culton: I'm asking the questions.

Mr. Robinson: We object to it in the form of in which it is asked.

A. Well, the only thing upon which I can base my judgment this time, is the average pressures of the formation which seem to be something on the order of maybe a hundred pounds less than delivery pressure, and I wouldn't say under those conditions that they had anything like two or three times the capacity which they were de- [fol. 140] livering.

Q. You know it is very common to put in the field boosters which make it possible to bring about the transportation of much larger quantities of gas, don't you?

A. Oh, yes.

Q. Through that same gathering system?

A. Oh, yes.

Mr. Culton: That's all.

Examination.

By Mr. Robinson:

Q. In your opinion will there probably be more or less gas delivered to that plant as time goes on?

A. Well, the inevitable decline, in formation pressure is taking place according to the records on the wells, and if the formation pressure declines, the deliverability declines and there will be a time when the deliverability will undoubtedly curtail the rate of delivery. When you get down to about half the formation pressure in one of these fields of that type, you've got only somewhere near ¼ the

deliverability you had at your original formation pressure.

Mr. Robinson: That's all.

Mr. Culton: Of course, you do know in many fields, [fol. 141] particularly in the fields, there are gathering lines now in existence after pressures in the formation have gone down, which are transmitting far more gas than was transmitted through those same gathering lines ten or fifteen years ago?

A. Oh, yes, I know.

Q. Just a minute. That's all.

Mr. Robinson: Judge, that's our rebuttal testimony.

Chairman Bond: Very well. Anything further?

Mr. Culton: Nothing further from us, Your Honor.

Chairman Bond: The Commission will close the case and take it under advisement.

[fol. 142] Said cause was heard throughout the day of April 5th, 1951, and was continued for further hearing on April 6th, 1951. At the close of the hearing the Commission took the matter under advisement, authorizing Counsel to file Briefs in support of their respective positions. On the 17th of May, 1951, the Commission, having considered the matter in conference, issued its Report of the Commission, which Report, with all endorsements thereon, is in words and figures as follows:

[fol. 143] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

REPORT OF THE COMMISSION—May 17, 1951

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 14th day of February, 1951, on the application of Panoma Corporation for an order interpreting and enforcing Order No. 19514, issued by this Commission, at which time Natural Gas Pipeline Company of America

requested that said cause be continued and the cause was then continued for hearing to the 5th day of April, 1951.

On the 5th day of April, 1951, said cause was again called for hearing on the application filed herein by Panoma Corporation and the response thereto filed by Natural Gas Pipeline Company of America. The applicant was represented by T. Murray Robinsons, Wallace E. Robertson, Kent W. Shartel and Richard W. Fowler, its attorneys, and the respondent, Natural Gas Pipeline Company [fol. 144] of Americas was represented by its attorneys, S. A. L. Moran, Warren Spies, D. H. Culton and Monnet, Hayes, Brown and Bullis, by Coleman Hayes; the Commission was represented by Floyd Green, Conservation Attorney, and no other persons appeared. All appearing parties announced ready for trial, and the applicant and respondent presented their evidence, and said cause was heard throughout the day of April 5, 1951, and continued for further hearing to April 6, 1951, and on the 6th day of April, 1951 the parties appearing as before, the Commission heard the arguments of counsel and both parties rested, and the Commission closed the case and took the matter under advisement, authorizing counsel to file briefs in support of their respective positions.

Now, on this 17th day of May, 1951, the Commission having considered the matter in conference, and each of the Commissioners being fully advised as to the entire record and having considered all evidence introduced, the arguments of the parties and the briefs filed, and being well and sufficiently advised, is of the opinion that the Commission should act on the application to the following extent, and the Commission finds as follows:

Findings

1. That notice by publication of the filing of the appli- [fol. 145] cation and the time and place of hearing thereon and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in the application and of the parties interested therein, and has jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That, pursuant to a contract dated December 1, 1946, Harrington & Marsh the predecessors of Panoma Corporation, during August of 1948, commenced the delivery of natural gas from wells owned by them in the Guymon-Hugoton field in Texas County, Oklahoma, to Natural Gas Pipeline Company of America, and thereafter such deliveries were continued by Panoma Corporation as purchaser and successor to all of the properties, rights and obligations of Harrington and Marsh; that the parties hereto have agreed that all determinations by this Commission may be made as if said deliveries had at all times been made by Panoma Corporation.

3. That said gas was delivered, but not metered or measured, at a compressor station owned and operated by Natural Gas Pipeline Company of America and located in Texas County, Oklahoma; that the amount of gas so de- [fol. 146] livered could be and may at all times be computed although it is not there metered.

4. That the provisions of Order No. 19514 became effective as of January 1, 1947, and after said date, no gas produced therefrom could legally be sold or purchased in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price of less than seven cents (7¢) per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute pressure per square inch and does and did prohibit sales and purchases for any lesser amount.

5. That uncertainty as to the finality of this Commission's Order No. 19514 created by the appeal therefrom to the Supreme Court of the State of Oklahoma, and the Supreme Court of the United States justified applicant in continuing the delivery of gas, without receiving payment, concurrent with the delivery, at the minimum price fixed by this Commission, until the time said order was affirmed by the Supreme Court and the mandate of affirmance filed with this Comm-ssion; this Commission had no knowledge of the acts of the parties, which the Commi. sion now finds were in violation of its order, until this proceeding was filed.

6. That deliveries or acceptance of gas in Oklahoma, [fol. 147] produced from the Guymon-Hugoton field in Oklahoma, that are not in compliance with Order No. 19514, are prohibited by said Order and the deliveries of

Panoma Corporation and receipt or acceptance by Natural Gas Pipeline Company of America are not in compliance with said order and are in violation thereof and should be stopped.

7. That the amount which the Natural Gas Pipeline Company was obligated to pay, and should have paid to comply with this Commission's Order, was seven cents (7¢) for each thousand cubic feet of gas, measured at an absolute pressure base of 14.65 pounds per square inch, which the Panoma Corporation delivered to the Natural Gas Pipeline Company of America at its compressor station and such respondent has not paid such amount and has refused to pay such amount although requested to do so.

8. That the stipulated amount of gas so delivered by Panoma Corporation to Natural Gas Pipeline Company of America at said compressor station to the first day of January, 1951, was 70,992,632 thousand cubic feet, and that is the amount, so far as it can be determined, which was produced at the wellhead.

9. That a reasonable time hereafter, in which to comply with said order is twenty (20) days, and Natural Gas [fol. 148] Pipeline of America should, within 20 days from the date of this order, pay Panoma Corporation the difference between the amount it has heretofore paid for such gas delivered to it by Panoma and the amount which it should have paid for the gas as herein determined; computed at seven cents (7¢) per thousand cubic feet measured at a pressure base of 14.65 pounds per square inch absolute, and unless Natural Gas Pipeline Company of America makes such payment in compliance with said order during the period and in the manner provided herein, Panoma Corporation should be directed to thereupon stop delivering gas to Natural Gas Pipeline Company of America and to file with this Commission an application for a share in the available markets that are complying with the orders of this Commission.

10. The Commission further finds that Order No. 19702, entered upon the application of Phillips Petroleum Company, was not entered as a fieldwide order, but was entered as affecting a part thereof only and on the application of an owner of a portion of the wells in the field,

and was based on facts presented to the Commission in support of the special relief or exception which the applicant in that case had requested; that therein the Com- [fol. 149] mission specifically found that applicant "did not see fit to introduce any evidence as to profit or losses from the production of natural gas from the Guymon-Hugoton Field;" that this Commission does not feel it is bound herein by any determination of facts or any order entered therein; that this Commission is not required herein to vacate, modify or interpret Order No. 19702; however since respondent's contention that such order is in conflict with the findings and judgment of the Commission herein, this Commission deems it appropriate to now find that when it entered its Order No. 19514 determining

> "That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch,"

that it applied to all producers, purchasers and takers of gas from said field, and that no sales or purchases of natural gas would be thereafter permiteed in the Guymon-Hugoton field at a price of less than 7¢ per thousand cubic feet, measured at a pressure base of 14.65 pounds [fol. 150] absolute per square inch; that the minimum price thus established would govern at the well head and at any other point in said Guymon-Hugoton field at which said gas would thereafter be delivered by a producer to a purchaser, so that the owners of the gas within said reservoir, being the lessees and the lessors, and other persons owning an interest in the gas in place, would at all times from and after the issuance of said order, receive from the delivery of their gas, as owners and producers thereof, not less than the minimum price fixed by the Commission.

11. That Order No. 19514 should be strictly enforced for the prevention of waste, the prevention of which is the basic purpose of said order and Natural Gas Pipeline

Company of America should not be permitted to plead its contract in avoidance thereof; and the contracts of the parties, neither by direction, implication nor complication can defeat the effect of the order of this Commission and to hold otherwise would cause and permit waste, and to adopt or accept the contentions of respondents would cause and invite discrimination and a general breakdown of the regulations preventing waste and protecting the correlative rights of the parties.

12. That to protect the correlative rights of the parties [fol. 151] and to prevent waste, this order should be issued.

ORDER

It is therefore ordered by the Corporation Commission of Oklahoma as follows:

1. That Natural Gas Pipeline Company of America is granted 20 days from date hereof in which to comply with Order No. 19514, by paying unto Panoma Corporation the difference between the amount which it has paid Panoma Corporation and the amount Panoma Corporation was entitled to receive for gas heretofore delivered and paid for at a lesser price, so that the total amount paid for gas delivered during the period covered by such payments will equal 7¢ per thousand cubic feet for the amount of gas delivered to said compressor station, and measured at a pressure base of 14.65 pounds absolute pressure per square inch, and if it does not so do within such time, Panoma Corporation is directed to forthwith cease delivering gas to Natural Gas Pipeline Company of America.

2. That Natural Gas Pipeline Company of America does not comply with Order No. 19514 by paying to Panoma Corporation 6¢ per thousand cubic feet of gas, for a part of the gas delivered, measured at a pressure base of 16.5 pounds per square inch absolute pressure, and it is di- [fols. 152-153] rected to desist from so doing and is directed to comply with said order.

3. That Natural Gas Pipeline Company of America shall pay Panoma Corporation for the gas delivered to its compressor station, the sum of 7¢ per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute

per square inch. In the event of its failure to do so, Panoma Corporation is ordered to stop delivery of gas to Natural Gas Pipeline Company of America.

Done and performed by the Corporation Commission of Oklahoma at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 17th day of May, 1951.

Corporation Commission of Oklahoma, (S.) Reford Bond, Chairman; Ray O. Weems, Vice-chairman; Ray C. Jones, Commissioner.

Attest: (S.) Tom McMurray, Secretary.

[fol. 154] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

NOTICE OF APPEAL, REQUEST FOR PREPARATION OF RECORD AND CERTIFICATION OF FACTS AND RECORD TO THE SUPREME COURT—Filed May 25, 1951

Natural Gas Pipe Line Company of America, being directly affected and aggrieved by Order No. 24,745 made and entered by the Corporation Commission of the State of Oklahoma in the above styled and numbered cause under date of May 17, 1951, hereby gives notice of its intention to appeal from said order to the Supreme Court of the State of Oklahoma, and requests that this notice of appeal be duly entered upon the docket of the Commission as provided by law.

For the purpose of perfecting said appeal, Natural Gas Pipe Line Company of America further respectfully requests that the court reporters for said Commission be directed to transcribe and prepare a full and complete [fols. 155-156] record of all pleadings, evidence, exhibits, orders, notices and testimony, and that the Chairman of the Commission certify to the Supreme Court of the State of Oklahoma under the seal of the Commission and transmit to the Clerk of said Court a true and complete transcript of the record so prepared, together with a writ-

ten statement of the reasons upon which the order appealed from was based.

Dated this 25th day of May, 1951.

Natural Gas Pipe Line Company of America, by: S. A. L. Morgan, D. H. Culton, Monnet, Hayes & Bullis, by (S.) Coleman Hayes, Its Attorneys.

[File endorsement omitted.]

[fol. 157] Before the Corporation Commission of the State of Oklahoma

[Title omitted]

Application for Supersedeas Bond—Filed May 25, 1951

Comes now Natural Gas Pipe Line Company of America and respectfully requests that an order be made by the Corporation Commission suspending and superseding the operation of Order No. 24,745 made and entered in the above style and numbered cause on the 17th day of May, 1951, pending final disposition by the Supreme Court of the state of Oklahoma of the appeal therefrom, and fixing the terms, conditions and amount of the supersedeas bond required to be given therefor as by law provided.

Dated this 25th day of May, 1951.

Natural Gas Pipe Line Company of America, by: S. A. L. Morgan, Warren T. Spies, D. H. Culton, Monnet, Hayes & Bullis, by (S.) Coleman Hayes, Its Attorneys.

[File endorsement omitted.]

[fols. 158-159] BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

NOTE RE BOND

On May 31, 1951, said cause came on for hearing upon the Motion to fix Supersedeas Bond. Said Motion was presented and by the Commission taken under advisement.

Whereupon the following Stipulation was entered into by the parties hereto:

It is stipulated between the parties that the provisions of Order No. 24745, relating to the 20-day period may be amended and modified to read 30 days within which to comply with said order, No. 24745.

[fol. 160] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER FIXING SUPERSEDEAS BOND

This cause came on for hearing before the Corporation Commission of Oklahoma on the 31st day of May, 1951, at 10 o'clock a.m., in its Court Room, Capitol Office Building, Oklahoma, Oklahoma; the Honorable Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, and Ray C. Jones, Commissioner, sitting.

After hearing argument of counsel, the cause was taken under advisement, and now on this the 5th day of June, 1951, the Commission being well and sufficiently advised in the premises is of the opinion that the application should be granted and therefore finds as follows:

Findings

1. That this is an application of Natural Gas Pipe Line Company of America, for an order fixing the supersedeas bond in this cause, as said company desires to [fol. 161] appeal from Order No. 24745, issued by this Commission on the 17th day of May, 1951.

2. That the respondent, Panoma Corporation, insists that said supersedeas bond be signed by good and sufficient sureties to be approved by the Commission, in an amount sufficient to compensate all persons for any damage which may be occasioned by postponing the effectiveness of said order pending an appeal therefrom to the Supreme Court.

3. That the supersedeas bond should be fixed in the amount of $1,500,000.00.

4. That this application should be granted.

Order

It is therefore ordered by the Corporation Commission of Oklahoma as follows:

1. That the appeal filed herein by the Natural Gas Pipe Line Company of America be and the same is hereby allowed.

2. That the Natural Gas Pipe Line Company file in this cause, a good and sufficient bond in the amount of $1,500,000.00, and that the terms and conditions of said bond be O. K.ed or agreed to by the Natural Gas Pipe Line [fol. 162] Company of America and the Panoma Corporation, and in the event the parties are unable to agree upon the terms and conditions of said supersedeas bond, that in that event the Commission retain jurisdiction for the purpose of determining and fixing the terms and conditions of said bond.

Done and performed this 5th day of June, 1951.

Corporation Commission of Oklahoma, —— ——, Chairman, (S.) Ray O. Weems, Vice-Chairman, Ray C. Jones, Commissioner.

Attest: (S.) Tom McMurray, Secretary.

[fol. 163] On June 13th, 1951, the Applicant, Natural Gas Pipe Line Company of America, filed in said cause its Supersedeas Bond, which Bond, was on said date approved by the Corporation Commission of Oklahoma and OK'd by

Counsel for Panoma Corporation, and which Bond, with all endorsements thereon, is as follows:

[fol. 164] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

SUPERSEDEAS BOND—Filed June 13, 1951

Know all men by these presents:

That Natural Gas Pipe Line Company of America, as principal, and *Central Surety and Insurance Corporation*, as surety, are held and firmly bound unto the State of Oklahoma, for its benefit and for the benefit of Panoma Corporation, in the sum of One Million Five Hundred Thousand Dollars ($1,500,000.00), for the payment of which, well and truly to be made, we do heregy bind ourselves, our successors and assigns.

The condition of the foregoing obligation is such that,

Whereas, on May 17, 1951, the Corporation Commission of the State of Oklahoma made and entered its Order No. 24745 in Cause CD No. 3048, whereby it ordered:

"1. That Natural Gas Pipeline Company of America is granted 20 days from date hereof in which to comply with [fol. 165] Order No. 19514, by paying unto Panoma Corporation the difference between the amount which it has paid Panoma Corporation and the amount Panoma Corporation was entitled to receive for gas heretofore delivered and paid for at a lesser price, so that the total amount paid for gas delivered during the period covered by such payments will equal 7¢ per thousand cubic feet for the amount of gas delivered to said compressor station, and measured at a pressure base of 14.65 pounds absolute pressure per square inch, and if it does not so do within such time, Panoma Corporation is directed to forthwith cease delivering gas to Natural Gas Pipeline Company of America.

"2. That Natural Gas Pipeline Company of America does not comply with Order No. 19514 by paying to Panoma Corporation 6¢ per thousand cubic feet of gas, for a part of the gas delivered, measured at a pressure base 16.5 pounds per square inch absolute pressure, and it is directed

to desist from so doing and is directed to comply with said order.

"3. That Natural Gas Pipeline Company of America shall pay Panoma Corporation for the gas delivered to its compressor station, the sum of 7¢ per thousand cubic feet measured at a pressure base of 14.65 pounds absolute per [fol. 166] square inch. In the event of its failure to do so, Panoma Corporation is ordered to stop delivery of gas to Natural Gas Pipeline Company of America."

And whereas, the said Natural Gas Pipe Line Company of America has appealed from said Order No. 24745 of the Corporation Commission of the State of Oklahoma to the Supreme Court of the State of Oklahoma; and

Whereas, the said Corporation Commission of Oklahoma did on June 5, 1951, by its Order No. *24805* in Cause CD No. 3048, order that the said Order No. 24745 be superseded, suspended and stayed pending the final determination of said appeal upon the filing with and the approval by the Corporation Commission of the State of Oklahoma of a bond in the sum of One Million Five Hundred Thousand Dollars ($1,500,000.00);

Now, therefore, if the said Natural Gas Pipe Line Company of America shall well and truly pay, for the benefit of the State of Oklahoma and/or Panoma Corporation, all damages occasioned by such appeal if said Order No. 24745 be affirmed in whole or in part, then and in that event this obligation shall be null and void; otherwise to remain in full force and effect.

[fol. 167] Natural Gas Pipe Line Company of America, by (S.) S. A. L. Morgan, Vice-President.

Attest: (S.) A. S. McKenzie, Asst. Secretary (Seal).

Principal, Central Surety and Insurance Corporation, by (S.) J. Frank Murphy, Attorney in Fact (Seal), Surety.

OK: T. Murray Robinson, Atty. for Panoma.

The foregoing Supersedeas Bond examined, accepted and approved by the Corporation Commission of the State of Oklahoma this 13th day of June, 195'

Corporation Commission of Oklahoma, —— ——,
[fol. 168] Chairman, (S.) Ray O. Weems, Vice-Chairman, Ray C. Jones, Commissioner.

Attest: (S.) Tom McMurray, Secretary (Seal).

Central Surety and Insurance Corporation, Home Office, Kansas City 10, Missouri.

Know all men by these presents:

That Central Surety and Insurance Corporation, in pursuance of authority granted by Article III, Section 12, of the By-Laws of the said Corporation, which said section has not been amended nor rescinded and of which the following is a true, full and complete copy:

"The President or any Vice-President, may appoint Resident Vice-Presidents and Resident Assistant Secretaries and Attorneys-in-Fact in any State or Country to represent and act on behalf of the Company, but only within the scope of the authority granted to them in writing; and any such Resident Vice-President, Resident Assistant Secre-
[fol. 169] tary or Attorney-in-Fact may be removed and the authority granted him revoked at any time, by the President or any Vice-President, the Board of Directors or the Executive Committee."

does hereby nominate, constitute and appoint: J. Frank Murphy, Oklahoma City, Oklahoma, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver for and on its behalf, as surety: Supersedeas bond on behalf of Natural Gas Pipeline Company of America, in favor of the State of Oklahoma, required in connection with appeal from order of the Corporation Commission of the State of Oklahoma in Cause CD No. 3048 in the Matter of the Application of Panoma Corporation for a Clarification of order No. 19514 and for an order of this Commission Directing the Action to be taken by the applicant and Natural Gas Pipeline Company of America under and Pursuant to said

order, in penalty not exceeding one million five hundred thousand and no/100 ($1,500,000.00) dollars.

And the execution of such bonds or undertakings, in pursuance of these presents, shall be as binding upon [fol. 170] the said Corporation, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the said Corporation at its office in Kansas City, Missouri, in their own proper persons.

All authority hereby conferred shall expire and terminate without notice at midnight of May 1, 1952.

In witness whereof, Central Surety and Insurance Corporation has caused these presents to be signed by its Vice-President and its corporate seal to be hereto affixed this 12th day of June, 1951.

Central Surety and Insurance Corporation, by R. A. Hubbard, Vice-President.

Attest: W. R. Chappelow, Assistant Secretary (Seal).

STATE OF MISSOURI,

County of Jackson, ss:

On this day, before the subscriber, a Notary Public of the State of Missouri, in and for the County of Jackson, duly commissioned and qualified, came the above named [fol. 171] Vice-President of Central Surety and Insurance Corporation, to me personally known to be the individual and officer who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposeth and saith, that he is the said officer of the Corporation aforesaid, and the seal affixed to the preceding instrument is the corporate seal of the said Corporation, and that the said corporate seal and his signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the City of Kansas City, this 12th day of June, 1951.

Pearl Pape, Notary Public (Seal).

My Commission expires January 5, 1952.

I, the undersigned, Assistant Secretary of Central Surety and Insurance Corporation, do hereby certify that the original Power of Attorney, of which the foregoing is a fully, true and correct copy, is in full force and effect.
[fol. 172] In witness whereof, I have hereunto subscribed my name as Assistant Secretary, and affixed the Corporate seal of the Corporation, this 13th day of June, 1951.

(S.) W. R. Chappelow, Assistant Secretary (Seal).

Form 2507-N—Copy (Rev. 3-47).

(Endorsements) Filed June 13, 1951. Secretary, Corporation Commission of Oklahoma.

[fols. 173-183] BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

EXHIBITS 1 TO 6 OMITTED IN PRINTING

Exhibit 1 is the copy of the original Application in this cause, and, since said original Application is hereinbefore copied in this record and indexed, to avoid duplication and encumbering the record the same is not again copied at this point.

[fol. 184] BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

NOTE RE EXHIBIT 7

Exhibit 7 is a copy of the RESPONSE OF NATURAL GAS PIPE LINE COMPANY OF AMERICA, filed herein, which Response is copied in full in this record and indexed; therefore, the same is not again copied at this point.

[fols. 185-186]

EXHIBIT 8

Revised Receivable— Natural Gas Pipe Line Company
Under
Oklahoma Corporation Commission Price Orders

1	2	3	4	5	6	7	8
Period 1948	Pipe Line and Fuel Volume 14.65#	Panoma Fuel & Shrink at 14.65#	Total Inlet at Comp. Sta.	Value at 7¢	Payment	Additional Amount Due	6% Interest to 2-28-51
August	216	–0–	216	$ 15.12	$ 11.58	$ 3.54	$ .51
September	2,374	–0–	2,374	166.18	127.26	38.92	5.45
October	52,056	–0–	52,056	3,643.92	2,901.09	742.83	100.28
November	1,505,891	97,950	1,603,841	112,268.87	80,922.99	31,345.88	4,074.96
December	2,361,879	151,800	2,513,679	175,957.53	127,044.86	48,912.67	6,114.08
	3,922,416	249,750	4,172,166	292,051.62	211,007.78	81,043.84	10,295.28
1949							
January	2,902,672	193,445	3,096,117	216,718.19	155,910.58	60,817.61	7,298.11
February	2,414,659	90,403	2,505,062	175,354.34	129,376.73	45,977.61	5,287.43
March	2,679,108	103,115	2,782,223	194,755.61	147,443.60	47,312.01	5,204.32
April	2,571,836	111,111	2,682,947	187,806.29	140,767.10	47,039.19	4,939.11
May	2,677,495	120,131	2,797,626	195,833.82	146,257.92	49,575.90	4,957.59
June	2,587,429	111,906	2,699,335	188,953.45	121,487.03	47,466.42	4,509.31
July	2,667,632	113,409	2,781,041	194,672.87	146,148.57	48,524.30	4,367.19
August	2,622,156	133,453	2,744,609	192,122.63	142,802.46	49,320.17	4,192.21
September	2,482,019	158,142	2,640,161	184,811.27	133,512.62	51,298.65	4,103.89
October	2,566,715	171,776	2,708,591	191,694.37	137,421.24	54,273.13	4,070.48
November	2,824,185	182,275	3,006,160	210,452.20	150,964.82	59,487.38	4,164.12
December	2,618,543	186,703	2,805,246	196,367.22	140,037.06	56,330.16	3,661.46
	31,614,449	1,664,869	33,279,018	2,329,552.26	1,712,129.73	617,422.53	56,755.22

97

1950							
January	2,745,828	188,835	2,934,663	205,426.41	146,621.43	58,804.98	3,528.30
February	2,402,846	157,763	2,560,609	179,242.63	128,191.38	51,051.27	2,807.82
March	2,678,276	150,975	2,829,251	198,047.57	145,208.99	52,838.58	2,641.93
April	2,545,512	133,892	2,679,404	187,558.28	140,587.95	46,970.33	2,113.66
May	2,643,888	145,757	2,789,645	195,275.15	144,573.24	50,701.91	2,028.08
June	2,559,516	129,257	2,688,773	188,214.11	140,444.23	47,769.88	1,671.95
July	2,506,741	117,265	2,623,006	183,680.42	136,979.11	46,701.31	1,401.04
August	2,595,411	151,780	2,747,191	192,303.37	139,223.07	53,080.30	1,327.01
September	2,561,677	160,307	2,721,984	190,538.88	137,104.22	53,434.66	1,068.69
October	2,658,040	153,368	2,811,408	196,798.56	142,501.01	54,297.55	814.46
November	2,508,016	162,222	2,670,238	186,916.66	134,231.08	52,685.58	526.86
December	3,278,024	205,652	3,483,976	243,878.32	175,720.54	68,157.78	340.79
	31,684,075	1,857,073	33,541,148	2,347,880.36	1,711,386.23	636,494.13	20,270.59
1951							
January	3,291,225	226,128	3,517,353	246,214.71	175,380.73	70,833.98	–0–
Grand Total	70,512,165	3,997,820	74,509,985	$5,215,698.95	$3,809,904.47	$1,405,794.48	$87,321.09

[fol. 186] EXHIBIT 9

Gas Purchase Contract Between Natural Gas Pipeline Company of America and Harrington & Marsh

Dated as of December 1, 1946

[fol. 187] GAS PURCHASE CONTRACT

This Gas Purchase Contract made as of December 1, 1946, by and between Natural Gas Pipeline Company of America, a Delaware corporation having offices at 20 North Wacker Drive, Chicago 6, Illinois, herein called "Natural", and D. D. Harrington, Stanley Marsh, Jr., Estelle Fariss Marsh, T. J. Wagner, Jr., Ida D. Marsh, and Isabel Marsh McCormick, joined by her husband, Jas. L. McCormick, and joined herein by Stanley Marsh, Jr., Independent Executor of the Estate of Stanley Marsh, deceased, both jointly and severally, said parties comprising the partnership doing business under the firm name of Harrington & Marsh, all residents of Amarillo, Texas, all or any of whom may be addressed at Amarillo Building, Amarillo, Texas, herein called "Sellers",

Witnesseth

That in consideration of the mutual covenants hereof, the parties agree as follows, to-wit:

Article First

Situation and Purpose of Parties

1. Natural is the owner of a natural gas transportation system originating near Gray, Oklahoma, and terminating near Joliet, Illinois, with a trunk lateral line traversing northern Illinois. By means of said system it transports natural gas and sells and delivers the same for consumption in the great Chicago metropolitan area and other [fol. 188] localities, and may make deliveries for consumption in additional areas. Its system is integrated with a natural gas transportation system owned by Texoma Natural Gas Company, herein called "Texoma", which system originates in the Panhandle gas field of Texas and

connects with the origin of Natural's pipeline system. Natural receives from Texoma's transportation system all gas presently transported and sold by it. Natural and Texoma are now engaged, under authorization from Federal Power Commission heretofore issued to them, in enlarging their respective transportation systems so that the integrated system will require on days of operation at maximum capacity an intake of approximately three hundred forty million (340,000,000) cubic feet of gas per day, measured as in Article Twelfth provided. Natural and Texoma have made application to the Federal Power Commission for a certificate of convenience and necessity permitting them to additionally enlarge such integrated system, so that same will require an intake of approximately four hundred seventy million (470,000,000) cubic feet of gas per day; and intend, if permitted by certificate satisfactory to them obtained, to construct additional facilities to obtain such additional enlargement of such integrated system. The construction of such additional facilities is herein referred to as the "proposed expansion". Natural desires to obtain from Sellers that proportion of its total system requirements of gas specified in Article Third hereof. The proposed expansion contemplates, among other things, the construction of a pipeline connecting Natural's pipeline system at its present Station 2 near Gray, Oklahoma, with the gas reserves of Sellers hereinafter referred to, and the installation at or near the intake terminal of said pipeline of a compressor station and appurtenances, herein referred to as "Station 1", for the compression of gas to be received from Sellers; all of such [fol. 189] facilities adequate for handling seventy-six million (76,000,000) cubic feet of gas per day.

2. Sellers represent that they own leasehold estates, mineral interests, lands, gas purchase contracts or other property rights covering in excess of seventy-eight thousand (78,000) acres of land in Texas County, Oklahoma, and in what is referred to by the Oklahoma Corporation Commission as the Guymon-Hugoton field, which vest in them the right to produce gas from such lands upon satisfaction of the covenants of such grants, as long as gas may be produced therefrom. Such rights, the lands covered

thereby, and/or the gas deposits underlying said lands, as the sense may best indicate, are herein referred to as "gas reserves". A detailed description of the instruments creating such gas reserves and the lands covered thereby is attached hereto and marked "Exhibit A". A map showing the location of the gas reserves in relation to the sections and townships in Texas County, Oklahoma, is attached hereto and marked "Exhibit B". Sellers desire to produce the gas underlying said gas reserves and to sell the same to Natural. They have completed a number of gas wells and propose to drill additional gas wells thereon, construct gathering lines connecting such wells to said Station 1, and install all other necessary facilities and appurtenances, and to operate the same; all for the purpose of delivering gas to Natural under the terms of this contract. They desire, and will undertake, to remove certain constituents of the gas to be delivered, after its compression by Natural at Station 1, and for that purpose intend to construct a gasoline plant and dehydration plant on the pipeline to be constructed by Natural, on the discharge side of said Station 1.

[fol. 190] Article Second

Initial Activities

1. Natural and Texoma have made application to the Federal Power Commission for the proposed expansion, and Natural agrees to prosecute and to cause Texoma to prosecute said application with due diligence. Should they be unable to secure such certificate or be able to obtain it only with conditions not acceptable to them on or before June 1, 1947, Natural shall promptly notify Sellers, and this contract shall then terminate.

2. Sellers shall, within thirty (30) days after Natural's prompt request, exhibit to Natural such evidence of their title to their gas reserves as shall in the opinion of counsel for Natural show that they are the lawful owners thereof and of the rights therein herein described, and are in a position to dedicate such reserves to the use of this contract. Should, in the opinion of Natural's counsel, Sellers fail to exhibit such title to substantially all of the

gas reserves described, Natural may at its option terminate this contract.

3. If and when Natural and Texoma shall have obtained a certificate of convenience and necessity from the Federal Power Commission for the proposed expansion within the above specified time limit, on terms satisfactory to them, Natural shall proceed and shall cause Texoma to proceed with due diligence, the availability of materials and other uncertain factors considered, to complete the proposed expansion, and as part thereof shall complete its Station 1, and a pipeline therefrom to its Station 2. Said station shall be located within 1 mile from the center of Section 7, Township 4 North, Range 17 East, in Texas County, Oklahoma unless the parties mutually agree otherwise. [fol. 191] Natural shall so arrange its pipeline facilities that the gas may, after compression at said station, be delivered to the gasoline and dehydration plants of Sellers in Article Fifth hereof specified, and then passed through a metering station in Article Twelfth described, which metering station shall be located on the discharge side of said plants.

4. It is contemplated that some of the increment in capacity to be obtained by the proposed expansion may be available before the entire construction is completed. Upon the granting and acceptance of a certificate of public convenience and necessity upon the application above referred to, Natural shall notify Sellers thereof of the probable date of initial delivery hereunder, and at the same time shall advise them of its best estimate of the quantity of gas which it desires to then have available for delivery hereunder. Sellers shall proceed with due diligence to drill gas wells, install gathering lines, construct the gasoline and dehydration plants herein described, provide all other facilities, and do all other things and acts necessary to make available for delivery hereunder at such date of initial delivery the quantities of gas so estimated, the availability of materials and all physical and legal restrictions on production considered. As the work on the proposed expansion continues, Natural shall from time to time notify Sellers of its estimates of any additional quantities of gas required to be available hereunder, in each case at

the end of one year from the date of the notice, and Sellers shall thereupon install such additional facilities and do all acts and things as may be necessary to increase the deliveries at the end of the named period by the quantity so estimated; all within the maximum daily quantity required by this contract.

[fol. 192] Article Third

Quantities of Gas to be Delivered

1. Sellers agree to sell and deliver to Natural and Natural agrees to purchase and receive from Sellers, subject to the limitations herein expressed, such quantities of gas as shall average daily, as nearly as is practicable in good operation seventy-six million (76,000,000) cubic feet per day and, in addition, any quantities of gas used for compressor station operation as provided in Article Fourth hereof. The obligation of Natural to purchase and Seller to deliver such quantities of gas shall commence not later than eighteen months after Natural and Texoma have obtained a certificate of convenience and necessity from the Federal Power Commission for the proposed expansion, on terms satisfactory to them, provided materials for such expansion are available to enable them to complete such construction within the eighteen months period; otherwise, as soon as the availability of materials shall permit the completion of the proposed expansion. Any variations in deliveries from said daily quantity shall be adjusted by Buyer currently and as soon as practicable. Prior to the completion of the proposed expansion, the quantities to be delivered hereunder shall be limited to the quantities which Natural may desire to take within the quantities stated in the notices provided by Article Second, Paragraph 4, hereof.

2. The obligation of Sellers to deliver Natural such quantities hereunder shall be limited to the quantity of gas which can be legally produced from the gas reserves less the quantity of gas excepted and reserved hereunder for the development and operation of Sellers' leaseholds and plants. Should any law or any rule or regulation of any state or Federal authority having jurisdiction require

[fol. 193] Natural to purchase a portion of such quantities from other than Sellers in said Guymon-Hugoton field, or shall make it necessary for Natural to do so in order to obtain such quantities, the quantity of gas otherwise to be delivered by Sellers hereunder shall be reduced by the quantity of gas Natural is so required to purchase during the time that Natural is so required. Natural may obey any such law, rule or regulation without legal contest.

Article Fourth

Delivery and Pressure

Sellers shall deliver gas hereunder into the custody of Natural and Natural shall first receive the custody of same, at the intake side of its Station 1, at a gauge pressure of not less than 150 pounds per square inch. The gas shall be compressed at said station by Natural according to the operating practice which it may from time to time follow, but not in excess of a gauge pressure of 800 pounds per square inch. Natural shall, after compression, then re-deliver said gas to Sellers' gasoline plant at an average daily temperature not in excess of 95° F. and shall use all reasonable effort to keep such gas free from compressor lubricating oil. Sellers shall be entitled to all hydrocarbons removed from the gas by such compression provided the collecting thereof be at their sole cost and risk. Sellers shall, after treatment at their gasoline and dehydration plants, re-deliver the gas into Natural's pipeline at the outlet of said plants at a temperature within 5° F. of a temperature at which the gas is received by Sellers at the inlet of said plants, provided Sellers shall not be required to reduce the temperature of such gas below 70° F. A metering station to be installed and operated by Natural as provided in Article Twelfth hereof shall be located near [fol. 194] the outlet of said plants at which point title to the gas shall pass to Natural; except, the gas required by Natural for its compressor station operation shall be metered separately at a point at or near said station and title thereto shall pass to Natural as used. Such gas so used for compressor station operation by Natural shall be assumed and agreed for purposes of measurement and

payment hereunder to have a flowing temperature in the meter of 60° F. and a total heating value of nine hundred sixty-five (965) British thermal units per cubic foot.

Article Fifth

Gasoline Plant Operation

1. Sellers reserve the right, subject to the limitations in this Article specified, to extract from the gas to be delivered hereunder nitrogen, helium, and also natural gasoline, butane, propane and other hydrocarbons other than methane, together with any methane necessarily removed from the gas in the process of recovering such other constituents; and Sellers shall remove certain constituents from the gas; all as hereinafter provided.

2. Sellers shall, prior to the first delivery of gas hereunder, construct at a proper location approximately one mile from Station 1 an absorption type gasoline plant and a dehydration plant for the recovery of constituents to be removed from the gas delivered hereunder, which plants shall be adequate for the treatment of seventy-six million (76,000,000) cubic feet of gas per day. Sellers shall at all times maintain said plants in good repair and operating efficiency, and shall restore the same or any part thereof which may be destroyed or otherwise become inefficient.

[fol. 195] 3. In the operation of said gasoline and dehydration plants, Sellers shall:

(a) Reduce the pressure of the gas between the inlet and the outlet of the plants by no more than is necessary for their efficient operation, and in no case more than fifteen (15) pounds per square inch.

(b) Conform their operations to the requirements of the efficient compression and transportation by Natural of gas delivered hereunder, to the full extent same may be accomplished without undue burden on the operation of said plants.

(c) Remove from the gas treated all hydrocarbons and water necessary to produce a dew point of the treated gas which shall not exceed a temperature of

twenty-five (25) degrees Fahrenheit at a gauge pressure of not more than seven hundred eighty-five (785) pounds per square inch, in order that the formation of hydrates and/or the condensation of hydrocarbons will not occur in Natural's pipeline system.

(d) Refrain from permanently removing hydrocarbons from the gas to the extent that their removal may reduce the heating value of the gas below nine hundred fifty (950) British thermal units per cubic foot.

4. The parties agree that the proper operation of said gasoline and dehydration plants is essential to the preparation of the gas for its efficient transportation. Should Sellers fail to operate said gasoline and dehydration plants in the manner herein required, Natural may, as often as such default may occur, enter upon the premises where said plants are located, take possession of said premises, plants and all appurtenances, place and maintain the same in adequate repair and operating condition, install any equipment or additions thereto required for efficient operation, and thereafter operate the same, all according to its own judgment and discretion. In such event it may market or otherwise dispose of all products recovered as if [fol. 196] the owner thereof according to its discretion, but shall account to Sellers for the receipts thereof, if any. Sellers shall on demand pay Natural all expenses in Natural's judgment reasonably applicable to such activities, and in addition a supervising charge of ten per cent (10%) above all such expenditures, together with interest at the rate of six per cent (6%) per annum on all amounts not paid when due; and such charges against Sellers shall be a lien on such plants, their appurtenances, and the real estate where located, and the proceeds, if any, received by Natural for the products produced, and shall be deductible against any sums payable for gas delivered hereunder. Natural may continue such operation until it has received assurance from Sellers satisfactory to it that the said plants will thereafter be operated as herein provided.

Article Sixth

Price and Payment

1. For all gas delivered hereunder Natural shall pay to Sellers an amount calculated on the following prices per one thousand (1000) cubic feet, metered as in Article Twelfth herein provided; that is:

(a) Until the first day of July, 1951, six cents (6¢),

(b) During the five-year period commencing July 1, 1951, seven cents (7¢),

(c) Commencing July 1, 1956, and for the remaining term of this contract, eight cents (8¢).

2. During any day when the gas delivered contains on the average nine hundred sixty (960) British thermal units, or more, per cubic foot, measured as in Article Eleventh provided, the price determined as in Paragraph 1 of this Article shall be increased or decreased in direct proportion as such British thermal unit content varies [fol. 197] from nine hundred sixty-five (965) units per cubic foot; during any day when the gas delivered contains on the average less than nine hundred sixty (960) and more than nine hundred fifty (950) British thermal units per cubic foot, such price shall be reduced by ten per cent (10%); during any day when the gas delivered contains on the average nine hundred fifty (950), or less, British thermal units per cubic foot, and is accepted by Natural, such price shall be reduced by twenty per cent (20%).

3. Sellers shall pay all ad valorem taxes on their gas reserves and properties and all present gross production taxes, severance taxes and other excise taxes upon or in respect to the gas delivered hereunder up to the point of delivery of the gas to Natural. All increases in taxes due to increases in the rates of such present gross production taxes, severance taxes, and excise taxes upon or in respect of the gas delivered hereunder or the production, transportation or handling thereof up to the point of delivery of the gas to Natural shall be borne one-half by Sellers and one-half by Natural; *provided, that all excise taxes*

upon or in respect of the manufacture or recovery of hydrocarbons by Sellers shall be borne by Sellers.

4. Natural shall render to Sellers on or before the tenth day of each month a statement showing the total quantity of gas received into the integrated pipeline system of Natural and Texoma and the quantities of gas delivered hereunder by Sellers on each day during the calendar month next preceding, the average British thermal unit content of the gas delivered by Sellers each day of such calendar month, and shall accompany such statement with the applicable charts and such other data obtained or used by Natural for the preparation of such statement. Sellers shall within five (5) days after receipt of such statement render to Natural an invoice for the gas delivered here-[fol. 198] under during such calendar month and shall at the same time return to Natural all charts and data delivered to them with Natural's statement. Natural shall pay Sellers for the gas delivered during such calendar month within ten (10) days after receipt of invoice; and upon failure so to do, interest thereon shall accrue at the rate of six per cent (6%) per annum. If Natural should fail to pay any amount due hereunder, to the extent same is not in bona fide dispute, for a period of sixty (60) days after its due date, Sellers may suspend deliveries of gas hereunder until such payment is made. Any statement or invoice shall be subject to correction within one (1) year after payment made by Natural for gas delivered during any calendar month, but if claim for correction is not made within that time, such statement and invoice shall become final as to both parties.

5. Natural may at its option make payment of any sum/s due hereunder by depositing same in the First National Bank and Trust Company of Oklahoma City, Oklahoma, to the credit of Harrington & Marsh and such deposit/s shall fully acquit Natural, irrespective of ownership or any change in ownership, of the rights hereunder of Sellers or any of them; provided, however, Sellers may on authorization in manner and form acceptable to Natural direct such payment/s to be made otherwise.

Article Seventh

Obligation of Sellers to Develop Gas Reserves and Provide Facilities for Delivery

Sellers agree that pursuant to the notices outlined in Article Second hereof, and thereafter during the continuance of this contract, they will, to the full extent required by prudent operation diligently develop the gas reserves, [fol. 199] drill gas wells thereon, install necessary gathering systems, booster stations, equipment, property and appurtenances for the gathering and delivery of gas, from time to time acidize or otherwise treat their gas wells to the extent necessary to obtain the fullest possible production therefrom, if necessary provide facilities to condition the gas produced to meet the requirements of this contract, continuously maintain their gas wells, pipelines, and all their property in good operating condition and operate the same with due diligence; all to the extent necessary to maintain at all times sufficient open flow in such wells and adequate capacity in pipelines, gasoline and dehydration plants and other properties so that Sellers will be able to deliver to Natural from said gas reserves according to the provisions of this contract, the availability of materials and all physical or legal restraints on production and sale considered, seventy-six million (76,000,000) cubic feet of gas per day; except that pending completion of the proposed expansion Sellers shall be required to maintain available for delivery no greater quantities of gas than those specified in notices given pursuant to Paragraph 4 of Article Second hereof.

Article Eighth

Remedy for Failure to Make Deliveries

1. "Day" shall be taken to mean the twenty-four (24) hour period commencing at eight o'clock A. M., Central Standard Time.

2. Should Sellers from causes not excused by the provisions of Article Fifteenth hereof or attributable to the inability of Natural to receive Sellers' deliveries, fail on

as many as seven (7) days (which need not be consecutive) during any thirty (30) day period to deliver the quantities [fol. 200] of gas required to be delivered by it under the provisions of Article Third hereof. Natural may, as often as such situation occurs and without waiver from prior indulgence and without prejudice to other remedy, at its option to be exercised within ninety (90) days after such occurrence, give notice to Sellers that it elects to reduce during the remaining term of this contract the quantity otherwise required to be delivered by a stated quantity per day, which shall not be more than the maximum quantity of the deficiency occurring during any twenty-four (24) hour period, and thereafter the quantities otherwise to be delivered hereunder shall be reduced by such quantity per day. Provided, however, should Sellers be prevented from delivering the quantities of gas required to be delivered hereunder by reason of any law in the nature of a proration or common purchaser law, or any regulation thereunder, such reduction of the quantities otherwise to be delivered hereunder by a stated quantity per day shall not exceed the daily average deficiency during said thirty (30) day period.

Article Ninth

Gas Reserves

1. Sellers agree that during the term of this contract they will do and perform all acts and things within reason which are necessary to continue in force, renew and maintain their ownership of the gas reserves and their exclusive right to produce gas therefrom. Provided that Sellers may abandon any gas leaseholds or other estates or rights covering portions of the gas reserves, where the land covered thereby in their judgment has been condemned by development, and may abandon any producing leasehold which may no longer be operated at a profit; conditioned, however, that Sellers shall first in writing offer, at least [fol. 201] ninety (90) days prior to any such abandonment, to sell, convey and assign to Natural the gas rights held by them in and to the lands, together with any gas wells and appurtenant equipment thereon, the gas rights to which are proposed to be abandoned, at the salvage value of such gas

wells and appurtenant equipment, if any, in place. Should Natural elect to accept said offer within thirty (30) days after receiving same, such property shall be transferred to Natural accordingly.

2. Sellers shall, for the purpose of consolidating the gas reserves into better operating position, have the right to exchange portions of the present gas reserves for other acreage of like area and productive quality situated within the area outlined and designated "Approved Area" on the map attached hereto and marked Exhibit "B." Upon such exchange Sellers shall prepare, execute and forward to Natural in duplicate, for its execution, a suitable written instrument in recordable form, which Natural will execute and return one Copy to Sellers, which instrument by its terms shall release *from the lien of dedication* hereunder the dedicated acreage so exchanged and impress with the *lien of dedication the substituted acreage acquired to the same extent as if originally part of the gas reserves.*

3. Sellers may at their option by notice to Natural acquire and dedicate to the users of this contract any other gas leases, gas purchase contracts, or gas rights covering lands situated within the area outlined and designated "Approved Area" on the attached map; and thereupon such additional acreage shall become subjected to all the terms of this contract.

4. The parties contemplating that the gas which may be produced from the gas reserves will be no more than sufficient to assure, after deduction of quantities thereof used for lease and gasoline plant and compressor plant [fol. 202] operation, the deliveries of gas required under this contract, for the purpose of preserving the gas underlying said gas reserves for such deliveries, *Sellers agree that they will, during the term of this contract, dedicate the gas reserves to the purpose of the contract,* and will not sell or deliver gas produced from the gas reserves to any person other than Natural; except:

(a) Until Natural shall have commenced acceptance hereunder of the quantities of gas to be purchased by it as provided in Article Third hereof, Sellers, in order to keep their leaseholds in force and

prevent drainage of gas from their gas reserves, shall have the right to sell and deliver gas therefrom to others than Natural.

(b) Sellers shall during any period when the production of gas from their gas reserves is subject to or limited by any law in the nature of a proration or ratable take law, or any regulation or order thereunder, have the right to sell to others than Natural any amount of gas prorated to or allowed Sellers' wells in excess of the amount of gas Sellers are currently required to deliver to Natural hereunder.

(c) Sellers also reserve the right to use all gas required for the development and operation of their leaseholds and their said plants, together with such gas reserved by lessors for domestic usage under the provisions of Sellers' leases and unitization agreements.

5. Should Sellers be unable to produce the quantities of gas required to be delivered hereunder from their gas reserves by reason of either the physical limitations of their wells located thereon or legal restrictions resulting from a proration or ratable take law, or any regulation or order thereunder, Sellers shall have the preferential right to supplement the quantities which can be physically and legally produced from their reserves by the purchase of gas from others for redelivery hereunder to the extent [fol. 203] necessary to enable Sellers at all times to deliver Natural that proportion of its total system requirements of gas specified in Article Third hereof.

6. It appearing that Natural contemplates the expenditure of large sums of money in the construction of pipelines to Sellers' gas reserves, and because of such expenditure and because the nature of its business requires assurance that the gas reserves of Sellers shall be continuously available to Natural during the entire period of this contract, the parties agree: that the provisions hereof shall be deemed covenants running with such gas reserves and the property and all interests of Sellers used or useful for the satisfaction by Sellers of the provisions of this contract to be by them performed, and shall follow the

ownership of same in any hands; that Natural shall be deemed to have acquired by this contract an equitable title in the said gas reserves and property to the extent necessary to preserve and obtain said gas for the satisfaction of the obligations of Sellers under this contract; and that this contract and all its provisions shall be subject to specific performance or any other applicable remedy.

Article Tenth

Quality of Gas

1. The gas delivered hereunder at the metering equipment of Natural shall, subject to the standards in this contract expressed, be natural gas as produced in its natural state, except: that Sellers shall treat the gas for recoverable constituents as in Article Fifth hereof provided, and shall, if necessary, treat such gas in order to bring it within the standards of purity hereinafter in this Article expressed.

[fol. 204] 2. Said gas:

(a) shall be commercially free from solid and/or liquid matter, both at the metering equipment of Natural and at the point where it first enters the custody of Natural;

(b) shall, at the metering equipment of Natural, not contain more than one grain of hydrogen sulphide per one hundred (100) cubic feet, provided that this purity requirement shall be considered as satisfied if a strip of white filter paper, recently moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of water, be exposed to the gas for one and one half (1½) minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five (5) cubic feet per hour, the gas not impinging from a jet upon the test paper, and after this exposure the test paper is found not distinctly darker than a second paper freshly moistened with the solution and not exposed to the gas;

(c) shall, at the metering equipment of Natural,

not contain more than thirty (30) grains of total sulphur per one hundred (100) cubic feet;

(d) shall, at the metering equipment of Natural, meet the requirements of subparagraph 3(c) of Article Fifth;

(e) shall, at the metering equipment of Natural, contain at least nine hundred fifty (950) British thermal units per cubic foot, measured as in Article Eleventh hereof provided, except as Natural may at its option accept gas of less content.

3. The sulphur and hydrogen sulphide content of the gas delivered by Sellers to Natural shall for the purposes hereof be determined by tests made or caused to be made by Natural as often as it may desire, of samples of gas taken from the gas stream from which deliveries are made, at or near the point of measurement.

4. Should such tests of the gas disclose the presence of [fol. 205] sulphur or hydrogen sulphide in excess of the amounts above specified:

(a) Sellers shall immediately discontinue deliveries hereunder from their wells known or found to produce gas which does not meet such tests, and progressively substitute for such deliveries gas from other suitable wells until a satisfactory test be obtained.

(b) If, after the procedure in the foregoing subparagraph (a) has been followed, tests of the gas continue to disclose the presence of sulphur or hydrogen sulphide in excess of the amounts in this Article permitted, Sellers shall remove all excess sulphur and hydrogen sulphide content by the installation and operation of facilities adequate for such purification.

(c) Natural may, without prejudice to any other remedy, upon advising Sellers of its intention so to do, refuse to accept further deliveries of gas from Sellers hereunder until such time as the gas at the point where samples are taken for testing shall conform to the foregoing sulphur and hydrogen sulphide content requirement.

5. Natural shall have the right to inspect and make copies of all reports and "test data" of Sellers in respect to any test made by Sellers on any of their wells. Natural shall, at its option and as often as it desires, be permitted to test any well of Sellers to determine the characteristics of the gas produced.

6. Should the gas offered for delivery by Sellers fail at any time to conform to any of the specifications in Paragraph 2 of this Article (other than subparagraph (e) thereof), Natural may at its option, and in addition to other remedy, accept delivery of the gas and itself remove any solid matter, liquid matter, hydrogen sulphide and/or sulphur in any form in excess of the amounts specified, and Sellers shall reimburse Natural for any reasonable expense incurred by Natural in effecting such removal, or for any reasonable expense otherwise incurred by Natural [fol. 206] by reason of the failure of the gas to conform to such specifications, all with interest at the rate of six per per cent (6%) per annum, and Natural may deduct the amount of all such expense from any sums payable for gas delivered hereunder.

Article Eleventh

British Thermal Unit Content

1. The unit of volume for heating value determination (British thermal unit content) shall be one (1) cubic foot of dry natural gas at a temperature of sixty degrees (60°) Fahrenheit and an absolute pressure of fourteen and sixty-five hundredths (14.65) pounds per square inch.

2. The average total heating value per cubic foot of the natural gas delivered hereunder for each day shall be determined by means of a Thomas recording calorimeter to be installed at or near the point of measurement by Natural. Such determination of the average total heating value shall be made by averaging the readings recorded for each day and the average thus obtained shall be the average total heating value per cubic foot delivered during such day. The accuracy of the Thomas recording calorimeter shall be checked at least once a week by means of a proof test of pure hydrogen gas, or by means of a

test of a standard sample of natural gas, or by means of a Junkers type of flow calorimeter operated according to the method of the United States Bureau of Standards, as may be selected by Natural. The Thomas recording calorimeter shall be deemed operating properly when the total heating value as recorded by it does not vary from the total heating value of pure hydrogen gas, or from the total heating value of a standard natural gas, or from the total heating value as determined by the Junkers calorimeter by more than five (5) British thermal units per cubic [fol. 207] foot, according to the test made. Provided that the Thomas recording calorimeter shall be immediately adjusted to register accurately should its recording show any variance from the total heating value determined by such tests. If at any time the Thomas recording calorimeter is out of service or not operating properly for any reason, determination of total heating value shall be made at least once daily by the Junkers calorimeter. Sellers shall have the right to examine the said calorimeter equipment and test records at any reasonable hour and to have a representative present at all tests and adjustments of such calorimeter equipment.

Article Twelfth

Metering—Unit of Volume

1. Natural shall furnish, install, operate and maintain metering stations, located as provided in Article Fourth hereof, properly equipped with orifice meters and recording gauges or such other type of meter or meters of standard make and design as may be mutually agreed upon, in such manner as to accomplish the measurement of gas delivered hereunder.

2. Sellers shall have access to said metering equipment at all reasonable times, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by the employees, agents or representatives of Natural. Charts and records from such metering equipment shall remain the property of Natural. Upon request of Sellers, Natural will submit to Sellers records and charts from such metering equipment subject to return by Sellers within ten

(10) days after receipt thereof, after which return the charts and records shall be kept on file for a period of five (5) years for the mutual use of both parties. At least once each month and on a date as near the first of the month as [fol. 208] practicable, Natural shall calibrate the said meters or cause the same to be calibrated in the presence of a representative of Sellers and the parties shall jointly observe any adjustments which are made in the meters should such adjustments be necessary. For purposes of measurement and meter calibration, the atmospheric pressure shall be assumed to be thirteen and two-tenths (13.2) pounds per square inch, irrespective of variations in natural atmospheric pressure from time to time. Natural shall give to Sellers notice of the time of all tests of meters sufficiently in advance of holding the tests so that they may conveniently have their representative present. If upon any test the metering equipment is found to be inaccurate by two per cent (2%) or more, but not otherwise, registrations thereof and any payments based on such registrations shall be corrected at the rate of such inaccuracy for any period of inaccuracy which is definitely known or agreed upon, but in case the period is not definitely known or agreed upon, then for a period extending back one-half of the time elapsed since the last day of calibration, not exceeding, however, fifteen (15) days. Following any test any metering equipment found inaccurate shall immediately be adjusted to measure accurately. If for any reason any meter/s are out of service and/or out of repair so that the quantity of gas cannot be ascertained or computed from the readings thereof, the quantity of gas delivered during the period same are out of service and/or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available using the first of the following methods which is feasible:

(a) By using the registration of any check measuring equipment of Sellers if installed and registering.

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation.

[fol. 209] (c) By estimating the quantity of deliveries

by deliveries during preceding periods under similar conditions when the meter was registering accurately.

3. The unit of volume for the measurement of gas delivered under this contract shall be one (1) cubic foot of gas at a base temperature of sixty degrees Fahrenheit (60°F.) and at an absolute pressure of sixteen and four-tenths (16.4) pounds per square inch, and the readings and registrations of the metering equipment herein provided for shall be computed in terms of such unit.

4. The temperature of the gas flowing through the meter shall be obtained by the use of a recording thermometer so installed that it will properly record such temperature. The average temperature recorded each day shall be used in computing measurements for that day.

5. The specific gravity of the gas shall be determined by Natural at or near the point of metering near the outlet of the gasoline plant at least semi-weekly, and the point of metering at the compressor station at least monthly. Natural shall advise Sellers of the time at which specific gravity tests are to be made in order that Sellers may conveniently have their representative present. The Edwards type specific gravity balance or equipment acceptable to both parties shall be used.

6. All fundamental constants, observations, records and procedures involved in determining and/or verifying the quantity and other characteristics of gas delivered hereunder shall, except as otherwise specified herein, be in accordance with such standards therefor as are or may hereafter from time to time be approved or recommended by the American Gas Association, and in the absence of such standards, then such standards as are acceptable to the parties hereto.

[fol. 210]

Article Thirteenth

Warranty of Title

Sellers hereby warrant title to the gas sold hereunder and the right of Sellers to sell the same and Sellers warrant that all such gas is owned by Sellers free from all liens and adverse claims, including liens to secure payment of production taxes, severance taxes and other taxes. Sellers

shall at all times have the obligation to make settlements for all royalties due and payments to the mineral and royalty owners under Sellers' leases as modified by any unitization agreements and other documents as may appear of record or otherwise be binding upon Sellers, and in accordance with the terms of the respective leases and to make settlements with all other persons having any interest in the gas sold hereunder, and Sellers agree to indemnify Natural and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas or to royalties, taxes, license fees or charges thereon which are applicable before the title to the gas passes to Natural or which may be levied and assessed upon the sale hereof to Natural. In the event any adverse claim of any character whatsoever is asserted in respect to any of said gas, Natural may retain, as security for the performance of Sellers' obligations with respect to such claim under this section, the purchase price thereof up to the amount of such claim without interest until such claim has been finally determined or until Sellers shall have furnished bond to Natural in an amount and with sureties satisfactory to Natural, conditioned for the protection of Natural with respect to such claim.

[fol. 210a] Article Fourteenth

Contract Subject to Laws and Regulations

This contract is subject to present and future valid laws and present and future lawful orders of all regulatory bodies now or hereafter having jurisdiction over the parties; and should at any time during the term of this contract either party, by force of any such law or regulation imposed, be ordered or required to do any act inconsistent with the provisions of this contract, the contract shall, subject to the other provisions hereof, continue nevertheless, but shall then be deemed modified to conform with the requirements of such law or regulation.

Article Fifteenth

Force Majeure Provisions

1. In the event of either party being rendered unable, wholly or in part, by force majeure applying to its/their operations, to carry out its/their obligations under this contract other than to make payment of amounts due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telephone to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice so far as they are affected by such force majeure shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

2. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earth-[fol. 210b] quakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs and/or alterations in machinery or lines of pipe, and any other cause whether of the kind herein enumerated or otherwise not within the control of the party claiming suspensions, all of which by the exercise of due diligence such party is unable to foresee or overcome.

Article Sixteenth

Arbitration

Should any dispute as to the construction of this contract or the respective rights, duties and obligations of the parties hereunder arise, the issues in dispute shall be arbitrated and determined by the person then the Senior Judge of the United States District Court for the Western District of Oklahoma, or, should he decline to act, such person/s, either one or three, as he shall, after hearing the suggestions of both parties, designate. Any arbitrator/s so appointed by the judge shall be qualified by

9. The production of natural gas in the Guymon-Hugoton gas field is in excess of the market demand.

10. The Cities Service Gas Company is now and has been at all times involved herein engaged in the business of buying and selling natural gas in the Guymon-Hugoton, Oklahoma, gas field and in the State of Oklahoma, and is a common purchaser of natural gas within the meaning of the statutes of the State of Oklahoma defining common purchasers. Cities Service Gas Company purchases natural gas from more than fifty persons, firms and corporations in the State of Oklahoma.

11. The Cities Service Gas Company is in fact a common purchaser of natural gas.

12. The Cities Service Gas Company is now, and has been at all times involved herein, engaged in using the highways of the State of Oklahoma for the purpose of laying natural gas pipe lines for the purpose of transporting natural gas.

13. Cities Service Gas Company is in fact and in law a common carrier of natural gas.

14. Cities Service Gas Company is now and has been at all times involved herein, engaged in taking natural [fol. 219] gas from a gas field, to-wit: the Guymon-Hugoton Oklahoma gas field, for purposes other than the purpose of developing a gas or oil field, or operating oil wells, or for the purpose of its own domestic use.

15. Cities Service Gas Company, a corporation, respondent herein, produces and purchases natural gas in the State of Oklahoma, transports the same and sells the same both directly and indirectly to the public for light, heat and power.

16. Cities Service Gas Company maintains and operates pipe lines for the transportation of natural gas in said Guymon-Hugoton Oklahoma gas field, one of which said pipe lines is in close proximity to said Section 8, in which the well of applicant involved herein has been drilled.

17. That Cities Service Gas Company, respondent, herein, qualified to do business in the State of Oklahoma on the 19th day of April, 1946, and thereby accepted and agreed to comply with the laws of the State of Oklahoma covering its operations thereafter.

education and training to pass on the issues in dispute; for example, if engineering questions are involved, qualified engineer/s shall be appointed, if legal questions are involved, qualified lawyer/s shall be appointed, or if the issues indicate, persons of varied training and education may be designated. Such judge or his appointees shall designate the procedure to be followed in the arbitration, which shall give both parties full opportunity to be heard. The determination by the arbitrator/s of the issues presented shall be final and conclusive, and the parties shall thereafter abide the decision made on such issues. Costs of any such arbitration shall be borne by the parties in equal proportions.

[fol. 210c]

Article Seventeenth

Option to Purchase

Sellers and each of them agree that as often as they or one of them shall receive a bona fide offer from a third party for the purchase in their entirety of either or all of the (a) gas reserves, (b) gas wells thereon, (c) pipe lines, (d) plants, and (e) other property at the time used or useful for the performance of this contract, and any rights under this contract, which offer Seller/s desires to accept, such Seller/s shall, before disposing of such interest, notify Natural by registered mail of the full particulars and terms of such offer, including the name of the party making the offer and the sum offered. Should Natural, within fifteen (15) days after receipt of such notice, advise such Seller/s of its desire to purchase the interest for which offer has been made, a contract for the sale and transfer thereof by such Seller/s to Natural on the same terms and conditions otherwise available to such Seller/s shall result, which contract shall be promptly executed.

Article Eighteenth

Miscellaneous Provisions

1. Each of the parties shall be responsible for any damage or injury to third parties or their property arising from

18. Said respondent qualified to do business in the State of Oklahoma with full knowledge of the laws of the State of Oklahoma relating to the ratable taking of natural gas and all statutes relating to natural gas, and was [fol. 220] thereafter a party in the case of *Oklahoma Natural Gas Company vs. State*, 161 Okla. 104, 17 Pac (2) 488, which decision required ratable taking of gas under and by virtue of an order similar to that sought in the instant case.

19. That the operation of the respondent, Cities Service Gas Company, constitutes it a transporter of natural gas.

20. A bona fide dispute has arisen between the applicant, Peerless Oil and Gas Company, a corporation, and respondent Cities Service Gas Company, as to the price, measurement and terms of the taking of natural gas by Cities Service Gas Company from the gas wells of Peerless Oil and Gas Company drilled into and producing from said common source of supply in Sections 5 and 8, Township 4 North, Range 16 E.C.M. Texas County, Oklahoma.

21. Peerless Oil and Gas Company, prior to the time of the filing of this action, made a tender to Cities Service Gas Company of the natural gas to be produced from the wells in said Section 5 and 8, and Cities Service Gas Company signified its willingness to take the natural gas therefrom, but refused to pay more than 4¢ per thousand cubic feet of natural gas, measured at a pressure of [fol. 221] 16.4 pounds absolute pressure per square inch, at the wellhead and refused to take natural gas from said wells unless applicant herein would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in the Guymon-Hugoton pool for the life of said leases. A dispute as to price, measurement and terms of taking natural gas arose as a result thereof.

22. Cities Service Gas Company, respondent herein, continued to refuse to take natural gas from said two wells unless applicant would dedicate all of its acreage in the field to Cities Service Gas Company at a price of 4¢ per thousand cubic feet at the wellhead for the life of the leases until long after the filing of this application when Peerless Oil and Gas Company, applicant herein, and Cities Service Gas Company, respondent herein, agreed that said wells be connected to the pipe line of Cities Service Gas

the handling of the gas delivered hereunder during the period of its or their custody and possession.

2. Any communications or notices pertaining to this contract shall be considered as duly delivered when mailed by registered mail to the post office address of either of the parties hereto, as set out in this contract, or to such other address as either party shall designate by formal written notice.

[fol. 210d] 3. This contract may be assigned by either of the parties hereto to any person, firm or corporation who shall expressly assume the obligations hereof on the part of the assignor to be performed and, in the case of assignment by Sellers or one of them, who shall acquire all of the assignor's interest in gas reserves and properties of Sellers herein referred to; but it may not otherwise be assigned without the consent of the other party hereto. Whenever any party is referred to herein, such reference shall be deemed to include the successors and assigns of such party. Provided, however, that nothing herein contained shall be construed to prevent any party hereto from pledging all or any portion of such party's property as security under any mortgage, deed of trust, or other similar lien, or from pledging this contract or any benefits accruing hereunder to the party making the pledge.

4. The term "gas", wherever used herein, shall mean natural gas. The words "herein" or "hereunder" shall, whenever the sense properly permits, refer to all provisions of this contract, rather than to the provisions of any particular Article or its subdivision.

Article Nineteenth

Term

1. This contract shall, unless terminated before the commencement of deliveries hereunder according to the provisions of Article Second hereof, continue and remain in effect until January 1, 1965, and as long thereafter as Sellers are able to deliver gas in paying quantities under its terms and conditions; provided, however, that Natural may, on January 1, 1965, or the first day of any year thereafter, upon one (1) year's prior notice to Sellers, cancel and terminate this contract.

Company and that Cities Service Gas Company would begin to take natural gas from said wells; that Cities Service Gas Company would begin making payment upon the purchase price of the natural gas taken by it from said wells at the rate of 4¢ per thousand cubic feet of natural gas at the wellhead, plus ½¢ per thousand cubic feet for gathering and delivering charges, or a total of 4½¢ per thousand cubic [fol. 222] feet delivered into the pipelines of Cities Service Gas Company; without prejudice to a final determination of the controversy in regard to measurement and price pending before the Corporation Commission of the State of Oklahoma in the above entitled cause, and provided that in the event the Corporation Commission of the State of Oklahoma should fix a higher price of natural gas or a different measurement and such order should be finally upheld, Cities Service Gas Company would pay to Peerless Oil and Gas Company the difference between the amount so paid and the price so fixed by the Corporation Commission of the State of Oklahoma, all as evidenced by a stipulation on file herein.

23. The persons and corporations operating pipelines and transporting natural gas out of the Guymon-Hugoton Oklahoma gas field own or control a great portion of the oil and gas leases in said field and control the outlets for natural gas produced in said field, and have therefore been able to dictate and have dictated the price, measurement and terms of the taking of natural gas taken in the Guymon-Hugoton Oklahoma gas field. Producers without a connection have been required to accept the price, measurement and terms offered by operators of pipelines in said field or shut down their wells.

[fol. 223] 24. There is no competitive market of natural gas in the Guymon-Hugoton Oklahoma oil field, but said market has been stifled by reason of the control of acreage and markets by the pipeline operators in said field, and as a result natural gas is being taken out of the Guymon-Hugoton Oklahoma Gas field at a price far less than its actual, or fair market value, and at a price which is far less than the value of natural gas for heating and other purposes as compared to the value of other fuels.

25. As a result of the controlled market, market prices,

[fol. 210e] 2. Should Sellers fail or be unable from any cause for a period of six (6) months to deliver to Natural at least twenty-five per cent (25%) of the volumes of gas required to be delivered by this contract. Natural may at its option give notice to Sellers of its intention to cancel this contract upon a stated subsequent date not earlier than two (2) years from the date of such notice, and this contract shall terminate on the date so fixed.

Executed the day and year first above written.

"Natural," Natural Gas Pipeline Company of America, By Floyd C. Brown, its President.

Attest: G. P. Garver, Secretary (Seal).

"Sellers," Harrington & Marsh, By (DDH) D. D. Harrington, (SM,Jr.) Stanley Marsh, Jr., (EFM) Estelle Fariss Marsh, (TJW,Jr.) T. J. Wagner, Jr., (IDM) Ida D. Marsh, (IMMcC) Isabel Marsh McCormick, (JLMcC) Jas. L. McCormick, (SM,Jr.) Stanley Marsh, Jr., Independent Executor of the Estate of StanleyMarsh, deceased.

[fol. 210f] State of Illinois,
Cook County, ss:

Before me, a Notary Public in and for said County and State, on this 5 day of December, 1946, personally appeared Floyd C. Brown, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year first above written.

Mary Barkyoumb, Notary Public in and for Cook County, State of Illinois (Seal).

My commission expires June 17, 1948.

measurement and terms of taking of natural gas in the Guymon-Hugoton field, one of the great resources of the State of Oklahoma, to-wit: natural gas, is being taken out of the Guymon-Hugoton Oklahoma field and out of the State of Oklahoma at a price which is far less than its replacement value.

26. Various purchasers of natural gas, in the Guymon-Hugoton field, purchase natural gas from different producers and contracts providing for different prices, terms and conditions.

27. Cities Service Gas Company purchases natural gas in the Guymon-Hugoton Oklahoma gas field under contracts [fol. 224] containing different terms and conditions as evidenced by its contract with Skelly Oil Company, its contract with Republic Natural Gas Company, and its contract with Hagy, Harrington and Marsh.

28. The operations of the respondent, Cities Service Gas Company, a corporation, constitute it a transporter of natural gas.

29. The operations of respondent, Cities Service Gas Company, constitute it a common carriers.

30. The operations of the respondent, Cities Service Gas Company, constitute it a common purchaser of natural gas.

31. The operations of respondent, Cities Service Gas Company, constitute it a public utility.

32. The taking of natural gas from the Guymon-Hugoton Oklahoma field at prices and under terms and measurement now prevalent in said field results in and causes:

(a) Economic waste of a great natural resource, to-wit: natural gas;

(b) Actual physical waste of natural gas;

(c) Loss to the royalty owners in said field;

(d) Loss to the State of Oklahoma in revenues in the [fol. 225] form of gross production taxes.

(e) Inequitable taking of natural gas from the common source of supply involved.

(f) Discrimination against various producers in the field.

33. By reason of the dispute between the Peerless Oil and Gas Company, applicant herein, and the respondent,

[fol. 210g] STATE OF TEXAS,
County of Potter, ss:

Before me, the undersigned, a Notary Public in and for said County and State on this 7th day of December, 1946, personally appeared D. D. Harrington and T. J. Wagner, Jr., to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the use and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Alta Belle Briley, Notary Public, Potter County, Texas (Seal).

My commission expires June 1, 1947.

[fol. 210h] STATE OF TEXAS,
County of Potter, ss:

Before me, the undersigned, a Notary Public in and for said County and State on this 7th day of December, 1946, personally appeared Estelle Fariss Marsh and Ida D. Marsh, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the use and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Alta Belle Briley, Notary Public, Potter County, Texas (Seal).

My commission expires June 1, 1947.

[fol. 210i] STATE OF TEXAS,
County of Potter, ss:

Before me, the undersigned, a Notary Public in and for said County and State on this 7th day of December, 1946, personally appeared Isabel Marsh McCormick, joined by her husband, Jas. L. McCormick, to me known to be the identical persons who executed the within and foregoing

instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the use and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Alta Belle Briley, Notary Public, Potter County, Texas (Seal).

My commission expires June 1, 1947.

[fol. 210j] STATE OF TEXAS,
County of Potter, ss:

Before me, the undersigned, a Notary Public in and for said County and State on this 7th day of December, 1946, personally appeared Stanley Marsh, Jr., Individually and as Independent Executor of the Estate of Stanley Marsh, deceased, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the use and purposes therein set forth, and in the capacity therein stated.

Given under my hand and seal the day and year last above written.

Alta Belle Briley, Notary Public, Potter County, Texas (Seal).

My commission expires June 1, 1947.

[fol. 210k] Exhibit "A"

Summary of Dedicated Gas Reserves

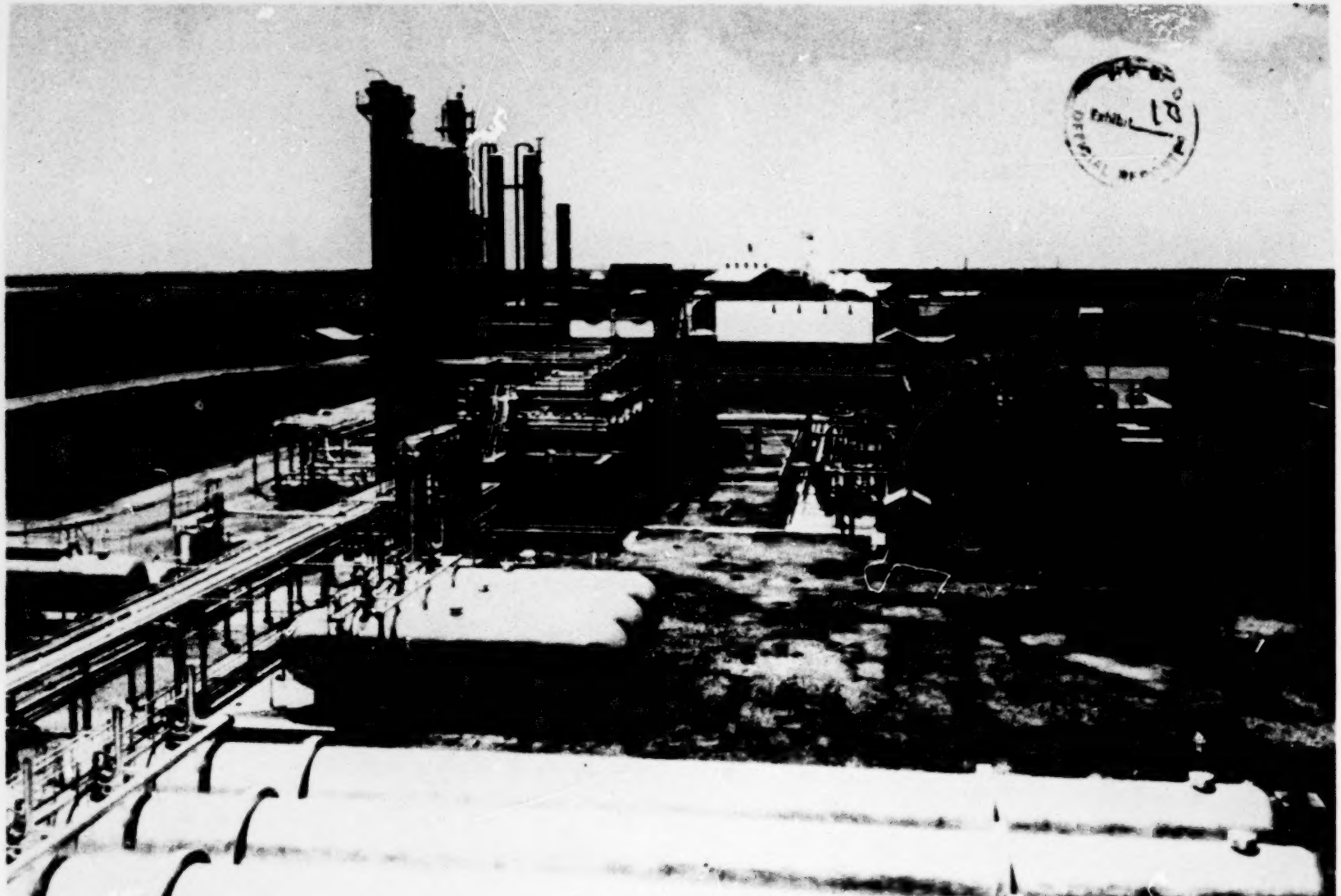
Gas Purchase Contract between Natural Gas Pipeline Company of America and Harrington & Marsh
Texas County, Oklahoma

	Acreage
Presently Developed Leaseholds	
23 Producing Gas Wells	14,720
Developed Leaseholds Under Contract	
5 Producing Gas Wells	3,200
Undeveloped Leases	60,152
Grand Total—Gas Reserves	78,072

"Immediately following the foregoing summary is a list of the tracts of land which constitute the 78,072 acres referred to in such summary."

Here follow 2 Photolithographs, Exhibits 10 and 11, folios 211, 212.)

EXHIBIT "10"



1268

EXHIBIT "11"

313

[fol. 213] EXHIBIT NUMBER 12

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 1054

Order No. 19514

Peerless Oil and Gas Company, a corporation, Applicant,

vs.

Cities Service Gas Company, a corporation, and all Operators, Producers and Takers of Natural Gas in the State of Oklahoma, and particularly in the Guymon-Hugoton Field, Respondents.

The School Land Commission of the State of Oklahoma and Texas County Land & Royalty Owners Association, Interveners.

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its Court Room in the Capitol Office Building, Oklahoma City, Oklahoma, on [fol. 214] the 26th day of November, 1945, at 10:00 o'clock, a.m., on the application of Peerless Oil and Gas Company, a corporation, and on the intervention of the School Land Commission of the State of Oklahoma and the Texas County Land and Royalty Owners Association, pursuant to order of the Commission setting the cause for hearing and proper and legal notice. The applicant, appearing by and through Earl Prue, its attorney, the respondent Cities Service Gas Company, a corporation, appearing by and through R. E. Cullison and Joe Rolston, Jr., the School Land Commission of the State of Oklahoma appearing by and through Walter Marlin and W. D. McBee, its attorneys, and the Texas County Land and Royalty Owners Association appearing in person, and the other interested parties appearing not, and the Commission being represented by Floyd Green, Conservation Attorney, and all parties who appeared and entered their appearances herein having announced ready for trial, the applicant and interveners

presented their evidence and rested, and Cities Service Gas Company introduced its evidence and rested; and all of said parties having introduced rebuttal evidence, the Commission closed the case and took the matter under advisement.

[fol. 215] Now, on this 9th day of December, 1946, the Commission, having considered the matter in conference and each of the Commissioners having read the entire record herein and being well and sufficiently advised, is of the opinion that the application should be granted to the following extent and finds as follows:

FINDINGS

1. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That Peerless Oil and Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

3. Cities Service Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

[fol. 216] 4. That this application involves the Guymon-Hugoton Field, which constitutes one common source of supply of gas, although there are three or more producing horizons that are interconnected, which are known as the Crider, Winfield, and Harrington horizons and are found at an approximate depth of 2810 feet. There are approximately 300 wells in said pool, some of which are not now connected to pipeline and producing; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that the total reserves are estimated at seven trillion cubic feet of natural gas. The limits of the probable productive area of the Guymon-Hugoton pool in Texas

County, Oklahoma, covers part of the following described townships, to-wit:

Townships:		Ranges:
1	North	12 to 17 E.C.M.
1, 2, 3 and 4	North	12 to 18 E.C.M.
	and	
5 and 6	North	12 to 19 E.C.M.

which area may be extended by the drilling of additional wells.

5. Peerless Oil and Gas Company is the owners of valid and subsisting oil and gas leases covering approximately 110,000 acres of minerals in the common source of [fol. 217] supply aforesaid, which oil and gas leases include leases covering

Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma,

and

Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

in which the two wells of Peerless Oil and Gas Company, referred to in applicant's petition, have been drilled.

6. The Texas County Land and Royalty Owners Association and the School Land Commission of the State of Oklahoma are the owners of minerals situated and located in the common source of supply aforesaid and are therefore interested in the matters and things involved herein.

7. Cities Service Gas Company, respondent herein, is the owners of various gas wells from which it is now and has been for a considerable length of time producing natural gas from the reservoir into which said well owned by Peerless Oil and Gas Company has been drilled.

8. Cities Service Gas Company is engaged in the transportation of natural gas in and from the Guymon-Hugoton, Oklahoma, gas field for a compensation, hire, and otherwise, from the same common source of supply or reservoir of natural gas into which said well of applicant [fol. 218] has been drilled as aforesaid.

Cities Service Gas Company, a corporation, as to the price and terms of the taking of natural gas from said wells of applicant, this Commission has authority to fix and should fix a minimum price and terms for the taking of natural gas to be taken in the Guymon-Hugoton field.

34. For the purpose of preventing waste, economic and physical, or natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the common reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton field, at a price less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

ORDER

It is therefore ordered by the Corporation Commission [fols. 226-232] of the State of Oklahoma as follows:

1. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price, at the well head, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

2. This order shall be effective as of January 1st, 1947.

Done and performed by the Corporation Commission at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 9th day of December, 1946.

Corporation Commission of Oklahoma, (S.) Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, Wm. J. Armstrong, Commissioner.

Attest: Tom McMurray, Secretary.

[fol. 233] EXHIBIT 14

Panoma Corporation Oklahoma Operations October 1, 1948 to December 31, 1950 Inclusive

Condensed Analysis of Actual and Projected Earnings

[fol. 234]

Panoma Corporation

Amarillo, Texas

Oklahoma Operations

Plant Products Income and Expense

Reference:	1948 3 Months	1949 12 Months	1950 12 Months	Total 27 Months
1. Gross Revenue from Plant Products	$278,938.12	$1,380,785.19	$1,308,682.02	$2,968,405.33
Expenses:				
2. Direct Plant Expense	$ 62,883.77	$ 243,800.02	$ 220,767.95	$ 527,451.74
3. Prod. and Gathering Expense	$ 14,278.80	$ 94,540.33	$ 91,104.86	$ 199,923.99
80% to Gathering	$ 11,423.04	$ 75,632.26	$ 72,883.89	$ 159,939.19
4. Taxes Other Than Income Tax	5,071.53	28,404.67	27,216.97	60,694.17
5. Discounts Allowed	386.97	6,136.37	2,553.13	9,076.47
6. Depreciation	52,459.62	283,901.11	286,006.24	622,366.97
7. Selling Expense	669.72	11,443.36	21,063.57	33,176.65
8. General and Administrative	$ 30,222.88	$ 80,179.33	$ 88,880.21	$ 199,282.42
85% to Plant	$ 25,689.45	$ 68,152.43	$ 75,545.18	$ 169,390.06
9. Miscellaneous Plant Plant Expense		807.00		807.00
10. Blending Stocks and Addatives			15,242.78	15,242.78
11. Processing Fee			4,135.01	4,135.01
Total Costs	$158,585.10	$ 718,277.22	$ 725,417.72	$1,602,280.04
Net Income	$120,353.02	$ 662,507.97	$ 583,264.30	$1,366,125.29

Summary

Total for 27 Months

M.C.F. Delivered	70,992,632
Gross Income from Extracted Products	$2,968,405.33
Gross Income per M.C.F.	$ .04181
Expense of Plant and Gathering	$1,602,280.04
Expense per M.C.F.	$ .02257
Net Income	$1,366,125.99
Net Income per M.C.F.	$ .01924

[fol. 235]

	Total Money	Net per M.C.F.
Residue Sales:		
Total M.C.F. Delivered: 70,992,632 M.C.F.	$3,634,523.74	$0.0512
Plant Products:		
Total M.C.F. Delivered: 70,992,632 M.C.F.	$1,366,125.29	$0.0192
Total Residue and Products:		
Total M.C.F. Delivered: 70,992,632 M.C.F.	$5,000,649.03	$0.0704

[fol. 236]

Analysis of Earnings Under Various Considered Factors

1. If Allowance Made for Interest Paid

Net Earnings admitted in preceding Computations		$5,000,649.03
Add Interest on Bank Debt		321,938.76
Earnings Required		$5,322,587.79
Basic M.C.F.		70,992,632
Yield per M.C.F. Required		$ 0.0750
Deficiency		$ 0.0046

2. If Allowed 6% Profit on Plant, Gathering System and Facilities

Net Earnings Admitted in preceding Computations		$5,000,649.03
Investment:		
Basic Plant	$3,108,672.97	
Lease Lines	406,766.03	
Gathering System	857,240.91	
80% of Remainder, Other than Lease Equipment	288,066.74	
Total	$4,660,746.65	
6% Profit 2¼ Years		629,200.80
Earnings Required		$5,629,849.83
Basic M.C.F.		70,992,632
Yield per M.C.F. Required		$ 0.0793
Deficiency		$ 0.0089

3. If Allowed 10% Profit on Plant, Gathering System and Facilities

Net Earnings admitted in preceding Computations	$5,000,649.03
10% Profit 2¼ years	1,048,668.01
Earnings Required	$6,049,317.04
Basic M.C.F.	70,992,632
Yield per M.C.F. Required	$ 0.0852
Deficiency	$ 0.0148

[fol. 237]

4. If Allowed 12.5% Profit on Plant, Gathering System and Facilities

Net Earnings admitted in preceding Computations	$5,000,649.03
12.5% Profit 2¼ Years	1,310,835.05
Earnings Required	$6,311,484.08
Basic M.C.F.	70,992,632
Yield per M.C.F. Required	$ 0.0889
Deficiency	$ 0.0185

5. If Allowed 16⅔ Profit on Plant, Gathering System and Facilities

Net Earnings admitted in preceding Computations	$5,000,649.03
16⅔% Profit	1,747,780.02
Earnings Required	$6,748,429.05
Basic M.C.F.	70,992,632
Yield per M.C.F. Required	$ 0.0951
Deficiency	$ 0.0247

6. If Allowed 20% Profit on Plant, Gathering System and Facilities

Net Earnings admitted in preceding Computations	$5,000,649.03
20% Profit	2,097,335.93
Earnings Required	$7,097,984.96
Basic M.C.F.	70,992,632
Yield per M.C.F. Required	$ 0.1000
Deficiency	$ 0.0296

[fol. 238]

References

1. Audit Reports, Exhibits "B", Line 2.
2. Audit Reports, Exhibits "B", supported in detail by Schedules of Audit reports as follows:
   - 1948 Schedule B-1
   - 1949 Schedule B-3, -1 Oklahoma
   - 1950 Schedule B-3, Column 2, Oklahoma
3. Audit Reports, Exhibits "B", supported in detail by Schedules of Audit Reports as follows:

1948 Schedule B-2	$ 14,278.80
1949 Schedule B-2-1, Oklahoma (Sub-Total)	94,540.33
1950 Schedule B-2, Column 2, Oklahoma	91,104.86
Gross Total	$199,923.99
80%	$159,939.1

Explanation of 80% Proration:

The only actual production expense incurred, other than that included and eliminated from General and Administrative expense, is well repair and conditioning and well testing. As practically no amount of well maintenance was incurred during this period only well testing is involved. It is considered that approximately $1,000.00 per month or $27,000.00 for the 27 months is chargeable against well testing which is less than 17% of total costs leaving 83% applicable to gathering and 80%, only, is used as being conservative.

4. Audit Reports, Exhibits "B", supported in detail by Schedules of Audit reports as follows:

1948 Schedule B–3 (Less Production Tax $10,724.10)
1949 Schedule B–6–1, Oklahoma
1950 Schedule B–5, Column 2, Oklahoma

5. Audit Reports, Exhibits "B".
6. Audit Reports, Schedules as follows:

1948 Schedule A–7
1949 Schedule A–4–Oklahoma
1950 Schedule A–4–Oklahoma

Charges for depreciation were allocated from figures shown on the audit report as follows:

[fol. 239]

		References			
		1948 3 Months	1949 12 Months	1950 12 Months	Total 27 Months
Total Depreciation Sustained		$60,820.48	$322,373.98	$325,809.35	$709,003.81
Extraction Plant	100%	$29,381.10	$182,577.04	$185,680.50	$397,638.64
Lease Lines	100%	4,964.36	23,267.53	24,483.13	52,715.02
Gathering System	100%	11,083.72	50,150.94	51,716.04	112,950.70
Sub-Total	100%	$45,429.18	$255,995.51	$261,879.67	$560,304.36
Remainder		$15,391.30	$ 66,378.47	$ 63,929.68	$145,699.45
Eliminate Lease Equipment		6,603.25	31,496.47	33,771.47	71,871.19
Balance–Miscellaneous		$ 8,788.05	$ 34,882.00	$ 30,158.21	$ 73,828.26
80% of Belance		$ 7,030.44	$ 27,905.60	$ 24,126.57	$ 59,062.61
Plus 100% Items Above		45,429.18	255,995.51	261,879.67	563,304.36
Total Included		$52,459.62	$283,901.11	$286,006.24	$622,366.97

7. Audit Reports, Exhibits "B".
8. Audit Reports, Exhibits "B" "General and Administrative" plus "Officers Salaries" which is the salary of employee designated as assistant secretary for the purposes of signing minor instruments. Supported is Detail by Schedules of Audit reports as follows:

1948 Schedule B–4
1949 Schedule B–5–1, Oklahoma
1950 Schedule B–5, Column 2, Oklahoma

Explanation of 85% Proration:

A detailed analysis was made of 1950 payrolls which are considered representative for the 27 months involved herein. 67 employees were paid a total of $257,662.37 and when classified according to work performed the following distribution was shown:

Plant and Pipeline	57	$206,516.02	88.57%
Production and Royalty	5	26,641.35	11.43%
Sub-Total	62	$233,157.37	100.00%
General Office	5	$ 24,505.00	Prorated

This discloses a ratio of 88.57% against 11.4% which has been further reduced to 85% to insure under-burden to plant costs.

9. Audit Report, Exhibit "B", 1949 (This is tank car rentals $789.10 plus filling station loss $17.90).
10. Audit Report, Exhibit "B", 1950 (Included as plant operating costs in Other Years).
11. Audit Report, Exhibit "B", 1950 (Premium paid for gas purchased and processed).

[fol. 240]

Exhibit 15

Before the Corporation Commission of the State of Oklahoma

Cause CD No. 1054

Order No. 19702

Peerless Oil and Gas Company, a corporation, Applicant,

vs.

Cities Service Gas Company, a corporation and All Operators Producers and Takers of Natural Gas in the State of Oklahoma, and particularly in the Guymon-Hugoton Field, Respondents.

The School Land Commission of the State of Oklahoma and Texas County Land & Royalty Owners Association, Interveners.

Report of the Commission

This cause came on for hearing before the Corporation Commission of the state of Oklahoma on the 31st day of January, 1947, at 1:30 o'clock p.m., in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Reford Bond, Chairman, Ray O. Weems, Vice-Chairman and Ray C. Jones, Commissioner,

sitting. R. M. Williams, Attorney of Bartlesville and Harry Turner, Attorney of Oklahoma City, appeared for the applicant, Phillips Petroleum Company; Earl Pruet, Attorney of Oklahoma City, appeared for the respondent, Peerless Oil & Gas Company, and Floyd Green, Conserva-
[fol. 241] tion Attorney, appeared for the Commission.

After hearing the cause, the matter was continued until February 4th, 1947, at 1:30 o'clock, p.m., for the purpose of hearing oral argument. On February 4th, 1947, after hearing oral argument and being well and sufficiently advised in the premises, the Commission denied the application and therefore finds as follows:

FINDINGS

1. That this is an application of the Phillips Petroleum Company, for an order vacating Orders Numbers 19514 and 19515 heretofore issued in this cause on the 9th day of December, 1946.

2. That this Commission has jurisdiction over the subject matter herein, that notice has been given in all respects as required by law, and that protests have been filed to the granting of the order.

3. That this cause was originally heard prior to December 9th, 1946, and that Orders Numbers 19514 and 19515 were issued pursuant to notice regularly given and that the applicant herein, Phillips Petroleum Company had notice of the proceedings and did not enter an appearance therein.

4. That order No. 19514 had for its purpose the fixing
[fol. 242] of a minimum price for natural gas at the wellhead in the Guymon-Hugoton Field, which price was applicable to all producers, purchasers and takers of gas in the field; that the applicant herein, Phillips Petroleum Company, is both a producer and taker of natural gas in the field and transports the gas produced from its leases in Texas County, across the Oklahoma line to a gasoline plant located in Texas, one-half mile south of the Oklahoma line adjacent to Texas County, Oklahoma; that all of the gas produced by Phillips Petroleum Company in Texas County, Oklahoma, is transported to said plant where 6/10ths of one gallon of liquid hydrocarbons are extracted from each thousand cubic feet of gas produced in Texas County,

Oklahoma; that the residue gas is then transported by Phillips Petroleum Company from said plant to the nearby location where same is delivered to the Panhandle Eastern Pipe Line Company at a price presently in the amount of 4.67 cents per thousand cubic feet; that the applicant herein then transports daily some 80,000 gallons of liquid hydrocarbons extracted from the natural gas at the plant in Texas, to another plant owned by applicant near Borger, Texas, where the liquid hydrocarbons are then further refined and sold by the applicant herein; that the larger [fol. 243] percentage of the liquid hydrocarbons extracted is 26-70 gasoline which has a current market value of between 5 and 5¼ cents per gallon; that the applicant herein, Phillips Petroleum Company, is now realizing from the natural gas produced in the Guymon-Hugoton Field, the equivalent of approximately 7¢ per thousand cubic feet at the wellhead within the terms and meaning of Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, did not see fit to introduce any evidence as to profits or losses from the production of natural gas in the Guymon-Hugoton Field and since the application filed herein alleged hardship if forced to comply with Orders Nos. 19514 and 19515, it was incumbent upon the applicatant to introduce proof showing wherein such hardship would occur.

5. That applicants complain that paragraph 1 of Order No. 19514 and paragraph 4 of Order No. 19515 prohibit said applicant from producing any natural gas in the Guymon-Hugoton Field and taking same from the formation because of the requirement that said gas must be sold at a price of 7¢ per thousand cubic feet at the wellhead; that said orders were meant to prohibit the production of natural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic [fol. 244] feet on the measurement basis provided for in said orders, if same were sold, but if not sold, that said gas should be so utilized and/or sold, that the producer would realize therefrom the equivalent of 7¢ per thousand cubic feet at the wellhead and on the pressure basis provided for in Order Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, is realizing from the utiliza-

tion and sale of natural gas produced by it in the Guymon Field, the equivalent of 7¢ per thousand cubic feet at the wellhead, on the pressure basis of measurement provided for in said orders for all natural gas produced by it in the Guymon-Hugoton Field; therefore, in that respect applicant is already complying with Orders Nos. 19514 and 19515.

6. That inefficient and wasteful utilization of natural gas produced in said field have resulted and will result, unless producers in said field receive for said natural gas or realize the equivalent of 7¢ per thousand cubic feet of natural gas at the wellhead, measured at a pressure of 14.65 pounds absolute pressure per square inch; that the price presently being paid for natural gas varies throughout the field with ano uniform price and that this Commission, unless it fixes a uniform price for the field is permitting discrimination in price which adversely affects many [fol. 245] producers and royalty owners; that the price being paid has no relation to the intrinsic value of the natural gas and is not a comparable price with other fuels; that it has no relation to the replacement value of the natural gas and one of Oklahoma's natural resources is being dissipated and wasted all to the detriment of the producers, royalty owners, School Land Commission, and the State of Oklahoma, and unless a price is fixed that has some relations to its actual value, the inefficient and wasteful utilization of gas from the Hugoton Field will result in great losses to one of Oklahoma's most valuable resources.

7. That applicant herein, Phillips Petroleum Company, is not injured by the application of a 7¢ price of all gas produced by it in the Hugoton Field since it is presently realizing approximately that amount at this time.

8. That this application should be denied in the interest of preventing: (a)—economic waste of a great natural resource to wit: natural gas, (b)—actual physical waste of natural gas in the Hugoton Field, (c)—loss to the producers and royalty owners in said field, (d)—loss to the State of Oklahoma in revenues in the form of gross production tax and loss to the schools of the State of Okla- [fol. 246] homa in the form of lessening royalties accruing

to the School Land Commission, (e)—the inequitable taking of natural gas from the common source of supply owned by all; (f)—discrimination as to prices paid throughout the field, which discrimination adversely affects many royalty owners and producers, (g)—the inefficient and wasteful utilization of natural gas.

9. That this application should be denied.

ORDER

It is therefore ordered by the Corporation Commission of the State of Oklahoma, that this application to vacate Orders Numbers 19514 and 19595 heretofore issued by this Commission in this cause on the 9th day of December, 1946, be and the same is hereby denied.

Done and performed this the 4th day of February, 1947.

Corporation Commission of Oklahoma, Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, —— —— Commissioner.

Attest: Tom McMurray, Secretary. (Seal.)

EXHIBIT "16"

Page 1 of 4
PM-013

Panoma Corporation
Cost of Service
Gathering & Treating
Year 1951

1	Direct Plant Expense	1950	$ 220767.95
2	Production & Gathering Exp, 80% of	1950	728387
3	Selling Expense	1950	210635
4	General & Administrative Expense 85% of	1950	755418
5	Blending Stocks & Additives	1950	15242 78
6	Processing Fee	1950	413501
7	Taxes other than Income Taxes	1950	272697
8	Discounts Allowed	1950	25531 3
9	Depreciation Accrual (Page 4)	1951	24002383
10	Return 11% on Net Invested Capital at end of	1950	49560098
11	Income Tax, 1/2 of Return equals 1/3 (Return plus Tax)		23780049
12	Total Cost of Service		$ 1342836.78
13	Delivery 1950 Mcf at 14.65		33541148
14	Per Mcf of delivery		$ .04153
15	Wellhead Price Fixed by Order of O.C.C.		.07000
16	Required Realization on Sales		.11153

Panoma Corporation

Est. of Investment for Earnings Analysis

2
6-U-51

		1950	1949	1948
1	Extraction Plant, end of year	$3108 672.97	$3087 441.58	$2998 116.01
2	Lease Lines " " "	406 766.03	1274 051.76	385 397.46
3	Gathering System " " "	857 340.91	Inc. Above	743 719.65
4				
5	Sub total	4572 679.91	4361 493.34	4017 137.12
6	Other Property Allocated, end of year			
7	Office Furniture & Equip't	54090.51	24 289.82	13417.11
8	Trucks	47743.22	45 559.32	5117.61
9	Camp Equipment	2250.04	Inc. Above	1908.34
10	Air Craft	1012232	1026024	859.04
11	Machine Tools	603.71	026.22	35.74
12	" Belts	1012232	10122.32	1012.24
13	Shielding Units	230 018.38	229 853.57	2248 716.00
14	100% of above	359 945.50	325 111.49	313 650.17
15	80% of above	287 956.40	260 089.19	250 920.14
16	Less plus less 15% Deduct amount	4660 636.31	4621 582.47	4268 031.11
17	Working Capital (1)	119 896.63		
18	Gross Invested Capital end of year	4780 532.94		
19	Estimated Reserve Requirement	456 887.64		
20	Net Invested Cap. 10/, end of year	$4323 645.30		

Note (1) See page 3. Value of manufactured products on hand is not included.

Kansas Corporation
Est of Working Capital

3
4-4-51

	Working Capital			
1	80% of Production Gathering Expense	1950	$ 91104.86	$ 72883.89
2	Direct Plant Expense			220767.95
3	Selling Expense			21063.57
4	General and Admin Expense	1950	88880.21	
5	85% above			75548.18
6	Blending Stocks & Additives			15242.78
7	Processing fee			4135.01
8				409641.38
9	1/8 Line 8			51205.17
10	Materials & Supplies *			68691.46
12	Total Working Capital			$ 119896.63

* Blending Stock 18691.46
Materials and Supplies 76504.38
Total
Est. for Lease and Plant 50000.00
Total $ 68691.46

Panama Corporation

Est of Depreciation Reserve Accrual and Reserve Requirement

4-4-51

4

				1950	1949	1948
1	Extraction Plant less Sewer Systems; Syst			4572679.91	4361449.35	4017127.32
2	Accrual 5% rate *			2186339	2180746	2008563.9
3						
4	Other Property allocated					
5	Office Furn Eqpt	@	7.5%	4056.75		
6	Motor Trucks		25%	119580		
7	Power Eqpt		20%	45001		
8	Air Eqpt		25%	85356		
9	Machine Tools		10%	56037		
10	" Beds		3%	30367		
11	Derricking Units		3%	6900.40		
12		Av. 7428%		2673120	2411928	2329648
13		80% value		2138984	1931942	1863718
14						
15	Total Accrual for following year (8 years)			24003383	23739408	21949356
16						
17	Reserve Requirement, end of year					
18				21949356	21949356	0
19					23739408	
20		Total		4.6887.64	21949356	- 0.

* Based upon accruing 75% of property in 15 years.

[fols. 251-252] Chairman's Certificate to foregoing transcript omitted in printing.

[fol. 253] [File endorsement omitted.]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,203

Natural Gas Pipe Line Company of America, Plaintiff in Error,

vs.

Panoma Corporation and The Corporation Commission of the State of Oklahoma, Defendants in Error.

OPINION—September 15, 1953

Syllabus

1. The grant of power to the Corporation Commission under 52 O.S. 1941, § 239 to regulate the taking of natural gas from a common source of supply "so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom", by necessary implication includes the power to employ such means as may be reasonably necessary to the accomplishment of the declared purposes, and includes the power to fix a price consideration in the taking of gas when found necessary to the attainment of such ends.

2. The provisions of 52 O.S. 1941, § 233, give the Corporation Commision authority to fix the price at which natural gas may be produced and taken from the field, under the circumstances and in the manner therein stated.

3. When the Corporation Commission by valid order fixes the minimum wellhead price which must be paid for natural gas taken from a designated gas field or gas pool, that order supersedes any existing contract by which a purchaser is taking natural gas from such

gas field or gas pool at a lesser price; and from and after the effective date of such order such purchaser owes a legal duty to pay for all gas taken, as much as the minimum price fixed by such order.

4. When, upon proper hearing, the Corporation Commission finds that a natural gas purchaser is taking natural gas from the producer at less than the minimum wellhead price fixed by valid order of the Corporation Commission, then the Commission may order that such purchaser pay at least as much as the fixed minimum price for all gas thereafter taken, with provision that if such purchaser fails to so pay for such gas that such purchaser must cease taking gas from such gas field; and this rule applies even in case the gas purchaser is taking gas under an existing written contract executed prior [fol. 254] to the Commission's price fixing order, which contract fixed the purchase price at less than the minimum fixed by the order.

5. When upon proper hearing the Corporation Commission finds that a purchaser of natural gas from a gas field or gas pool covered by price fixing order has taken gas therefrom and paid therefor a price or sum less than the legal minimum price, then the Corporation Commission may ascertain the amount of gas so taken at such lesser price and may ascertain the balance necessary for such purchaser to pay as a "back pay" sum to bring such purchaser into full compliance with the price fixing order by paying for all such gas a sum and price equal to the minimum price established by the price fixing order.

6. When the Corporation Commission has properly determined the amount of a "back pay" sum legally due to be paid by a natural gas purchaser, to constitute compliance with a valid order fixing a minimum price, the Corporation Commission may direct that such sum paid, with provision that if such payment is not made the said purchaser shall cease to take gas from such gas field or gas reservoir, and such an order does not constitute the rendering of a money judgment beyond jurisdiction.

7. Orders of the State Corporation Commission in administering and enforcing compliance with a valid order fixing minimum wellhead price of natural gas produced in a certain field in Oklahoma, did not constitute an undue interference with Interstate Commerce and such orders are not violative of the Commerce Clause of the Federal Constitution though such natural gas after production and compression and further processing is to go into purchaser's pipeline system for transportation to other states for final sale to consumers.

8. Record examined, and held, that the findings of the Corporation Commission that the purchaser here involved was a purchaser of natural gas from the named gas pool or gas reservoir, and that such purchaser had taken and was taking gas from such reservoir at less than the minimum purchase price theretofore fixed by valid order, are all sustained by the evidence and by the stipulation of the parties.

Application to the Corporation Commission by Panoma in connection with taking of natural gas from certain leases in Texas County, by Panoma, and sold to Natural. From the order made thereon Natural appeals.

Affirmed

[fol. 255] S. A. L. Morgan, D. H. Culton, Warren T. Spies, and Coleman Hayes, of Okla. City, Okla. For Plaintiff in Error.

Robinson, Shipp, Robertson & Barnes, Richardson, Shartel & Cochran, Blakely Murphy, all of Okla. City, Okla. For Defendant in Error Panoma Corporation.

Floyd Green, Ferrill Rogers, both of Oklahoma City, Okla. For Corporation Commission.

Welch, J.,

The Panoma Corporation owns extensive oil and gas leases in the Guymon-Hugoton gas field in Texas County, Oklahoma. Gas in large quantities is taken therefrom

daily pursuant to a contract between Panoma and The Natural Gas Pipeline Company of America.

This contract was made and this gas taking began before the State Corporation Commission by its orders Nos. 19514 and 19515 fixed the price at not less than 7¢ per thousand cubic feet at the wellhead for all natural gas taken from the producing structures or formations of said gas field.

Those orders were upheld by the Supreme Court of Oklahoma and by the Supreme Court of the United States in 1950. Cities Service Gas Company v. Peerless Oil & Gas Co. et al, 203 Okla. 35, 220 P. 2d 279. Cities Service Gas Company v. Peerless Oil & Gas Company, Corporation Commission of Oklahoma, et al, 340 U.S. 179, 95 L. Ed. 156. Thus, since the effective date of the aforesaid orders, January, 1947, no one could legally take natural gas from that field at a price less than 7¢ at the wellhead.

The authority of the State in the exercise of its police power to regulate the taking of natural gas is well settled. See Julian v. Capshaw, (1930) 145 Okla. 237, 292 P. 841; Wilcox Oil & Gas Co. v. State (1933) 162 Okla. 89, 19 P. 2d 347; Sterling Refining Co. v. Walker (1933) 165 Okla. 45, 25 P. 2d 312; Russell v. Walker (1932) 160 Okla. 145, 15 P. 2d 114; Patterson v. Stanolind Oil & Gas Co. (1938) 182 Okla. 155, 77 P. 2d 83; (appeal dismissed, 35 U.S. 376, 83 L. ed. 231); Croxton v. State (1939) 186 Okla. 249, 97 P. 2d 11; Denver Producing & Refining Co. v. State, (1947) 199 Okla. 171, 184 P. 2d 961; Quinton Relief Oil & Gas Co. v. Corp. Comm. of Oklahoma (1924) 101 Okla. 164, 224 P. 156, and Cities Service Gas Co. v. Peerless Oil & Gas Co. et al, (1950) 203 Okla. 35, 220 P. 2d 279.

The contracted price Natural was to pay Panoma for gas taken under the contract was less than 7¢, but the contract was definitely subject to any valid order of the Corporation Commission. The contract in Article Fourteenth provided that:

> [fol. 256] "This contract is subject to present and future valid laws and present and future lawful orders of all regulatory bodies now or hereafter having jurisdiction over the parties; and should at any time during

> the term of this contract either party, by force of any such law or regulation imposed, be ordered or required to do any act inconsistent with the provisions of this contract, the contract shall, subject to the other provisions hereof, continue nevertheless, but shall then be deemed modified to conform with the requirements of such law or regulation."

See, also, the following language of this court in State v. Waterfield, 167 Okla. 209, 214, 29 P. 2d 24, 29:

> "Thus it may be seen that changes in the obligations of contracts may be made when made as a proper exercise of the police power, not because constitutions may be suspended by police power, but because the right to legislate in the exercise of that power is a part of the existing law of the state at the time of the execution of the contract, and as such enters into the terms and provisions of the contract in the same manner that statutes prescribing procedure become a part of the contract.
>
> "It may be said that all property rights including contracts are subject to the proper exercise of the police power, and in that respect it is often said that individual rights to property being subject to the exercise of this power are qualified as distinguished from absolute."

See, also, Home Building & Loan Ass'n. v. Blaisdell, (1933) 290 U.S. 398, 78 L. ed. 413, 54 S. Ct. 231.

So in 1951, after the aforesaid Price Order of Commission had been fully sustained, Panoma, after demand, made this application to Commission to require Natural to comply with said order to pay a wellhead price of 7¢ for gas taken and to be taken by Natural from Panoma's leases in said field in Texas County.

Natural responded, in substance, that by reason of the terms of the contract Commission's price order was not applicable to the gas taken by Natural; and that if proper analysis be made there was no violation of the price order in the taking of gas from this field by Panoma and Natural because such taking under the contract resulted in

an aggregate or gross return to Panoma equal to [fol. 257] a wellhead price of 7¢ or more.

Upon trial Commission made its findings and entered its order. Commission found, among other things, 1, that since the effective date of the price order January 1, 1947, no one could legally take gas from this field at a price less than 7¢ per thousand cubic feet; 2, that the uncertainty as to the finality of that order, created by the appeal therefrom to the Supreme Court of Oklahoma, and the Supreme Court of the United States, justified Panoma in delivering gas from these leases to Natural without regard to said price order, or at less than the minimum price under the contract until said order was finally affirmed; 3, that nevertheless the taking of gas from the structure and formation in these leases at a price less than 7¢ at the wellhead was illegal; 4, that Natural should pay to Panoma the difference between the lesser amount actually paid for gas taken before June 1st, 1951, and the sum or price due at 7¢ for each thousand cubic feet; 5, that the actual amount of gas so taken from the leases was stipulated and was determined in accordance with such stipulation; 6, that therefore Natural should in twenty days pay the sum due Panoma; 7, that strict enforcement of the price order was necessary for the prevention of waste; 8, that the contract between Panoma and Natural could not impair or defeat the effect of the order; 9, that the acceptance of the contract contention would cause and invite discrimination and general breakdown of the regulation preventing waste, etc.

Commission ordered in effect that Natural should pay for all gas received on and after January 1, 1951, at the sum and rate of 7¢ per thousand cubic feet at the wellhead. Commission further ordered that Natural should pay to Panoma a "back-pay" sum sufficient to equal 7¢ per thousand cubic feet for all gas taken by Natural prior to January 1, 1951, at a lesser price.

Commission further ordered that if Natural should fail after 20 days to pay such "back-pay" sum to Panoma, or should fail to pay as much as 7¢ wellhead price for gas taken after January 1st, 1951, that Panoma should cease any delivery of gas to Natural.

On this appeal Natural contends as upon its response

below, with the further contention that Commission's "back-pay" order has the effect of a money judgment which Commission was not authorized to enter.

Natural's contention that Commission's price order was not applicable to the gas taken by Natural was based on Natural's construction of the contract to be a purchase of only [fol. 258] a part of the natural gas taken from Panoma's leases. Since Commission did not agree with that construction we must refer to some of the details of the contract, but we deem it not necessary to quote all of the contract of many pages.

As items of background the contract shows that Natural owns an extensive pipeline system by which it transports gas from Texas and Oklahoma to consumers in the Chicago metropolitan area and elsewhere; that with contemplated expansions the system will require on maximum days up to three hundred forty (340,000,000) million cubic feet of gas per day; that Natural desires to purchase from seller (Panoma) as a part of its system needs, a daily average of seventy-six (76,000,000) million feet of gas; that seller owned gas rights in more than seventy-eight thousand (78,000) acres of land in the Guymon-Hugoton field, described by legal description of each tract of land in the contract, and that seller desires (quoted from contract) "to produce the gas underlying said gas reserves and to sell the same to Natural. They have completed a number of gas wells and propose to drill additional gas wells thereon, construct gathering lines connecting such wells * * * and install all other necessary facilities and appurtenances, and to operate the same; all for the purpose of delivering gas to Natural under the terms of this contract."

We should here observe that the rough gas as it comes from the well is not suited to transportation in Natural's pipeline, and that the gas must go through a refining or cleaning or improving process before Natural can transport it and sell it to its ultimate consumers. It is essential that such processing be done before the gas is finally taken into Natural's pipeline. That item was considered in the contract and the plan was set out in substance as follows: Seller should deliver the gas direct from the wells to Natural's initial or primary pipe. Natural would then pass it into its

own compressor station on or near the seller's premises where Natural would compress the gas, thence it would in turn pass the gas to a processing plant to be constructed and operated by seller.

Panoma was definitely obligated to construct said plant at a cost of several million dollars, and to efficiently operate it and to process the gas through such plant so as to deliver the gas back to Natural into its pipeline system in a carefully specified condition. When the gas was thus returned to Natural it was to be metered and that measurement was the basis of payment by Natural to Panoma, with provision that title passed to Natural at that point. There was provision in detail as to the operation of this processing plant by Panoma, and in case of failure of Panoma to properly and [fol. 259] efficiently operate the plant, Natural had the right to take over such plant and add any needed equipment and operate the plant for seller, all at seller's expense, plus 10% supervising charge, and keep custody and operation of the plant until sellers could give satisfactory assurance as to future operation by sellers.

In processing the gas from Natural's compression station or plant through seller's processing plant the seller was to remove certain detailed constituents of the rough gas including water and a sufficient portion of the hydrocarbons so as to produce a certain specified condition in the gas and so as to prevent the formation of hydrates and/or the condensation of hydrocarbons in Natural's pipeline system. But seller was prohibited from removing hydro-carbons to the extent of reducing the heating value of the gas below a fixed figure.

All constituents so removed from the rough gas which had any value was to be kept by sellers as their own property, or for sale by them for their own account.

The contract provided that it was contemplated by the parties that all of the gas underlying seller's reserves of 78,000 acres would be required to fulfill this sale contract, and that all such gas was reserved for deliveries under this contract, and that all of the entire gas reserve was dedicated to the purpose of this sale contract, and none of such gas under the entire area should be sold to any other person. To this last provision there were minor exceptions including

or preserving the rights of landowner—lessors to have gas for domestic usage, and the right of sellers to use gas required for operation of the leaseholds, but we regard those items as being immaterial here.

Natural places great emphasis on part of these contract provisions and argues that in fact it did not purchase from Panoma all of the gas produced from the wells and first delivered to Natural to enter its compressor. Natural contends that since Panoma thereafter extracted part of the constituents of the rough gas that Natural bought only a part or portion of the whole gas, and much emphasis is placed on the provision that it is only the gas in its final purified form which was metered and title passed to Natural which Natural bought, and in that manner took from the gas wells. Natural contends, and the proof shows, that Panoma marketed certain of the extracted constituents from the gas and that Panoma received substantial sums therefor. In final analysis it is the contention of Natural that the sum it paid to Panoma for the gas taken into its pipeline plus the gross amount received by Panoma for the sale of extracted ingredients amounted to as much or more than 7¢ for each cubic feet of natural gas taken from the wells, and that therefore the taking from the gas reservoir was not in violation of Commission's price order.

[fol. 260] This calculation by Natural would add the gross sum received by Panoma for all sales of extracted ingredients as if the gross sum amounted to a payment to Panoma on or for the wellhead gas. That calculation, however, overlooks these facts: (1) that such payments to Panoma are more in the nature of payments for manufactured commodities than payments for natural gas, (2) that no account is taken of the great cost of building, maintaining and operating the expensive plant required in the process and required by the contract; (3) that, as between Panoma and Natural, Panoma has earned the value of these extracted ingredients by treating or processing Natural's gas to bring it to the precise condition required by Natural in its business, and specifically required by the contract, (4), the well known fluctuation in market price of such commodities which would result in Panoma operating its plant at different times at more or less profit, or more or less loss.

This contention by Natural does not take into consideration any part of the cost of the processing operation. In order to determine whether the value of the extracted ingredients exceeded the processing expense, or whether Panoma made a profit on the processing operation, the calculation must necessarily include the cost of operating its processing plant plus some contribution to the cost of construction of the plant, or to depreciation, which is not included in Natural's calculation and argument.

Furthermore, this contention by Natural does not give sufficient emphasis to the contract provision that Panoma must construct and operate the plant, whether profit or less is realized from the sale of the extracted constituents of the rough gas.

Panoma contends, and there is evidence to support it, that proper calculation of the operating cost of processing the gas, with proper charge for depreciation of the plant, or proper cost amortization, with maintenance and replacement costs, would result in showing a loss, or little if any profit at all, and might very well at different periods show an actual loss; that in any event the amount of profit or loss would fluctuate over varying periods, and could not enter into such a calculation as that proposed by Natural, because it would result in different calculations over varying periods, and would result in Natural's paying one price in one period to bring the aggregate up to 7¢ and a different price over a different period to bring such aggregate up to 7¢. Thus Panoma points out that Natural would be operating upon a different pay basis for each month, or for each quarter or for each semi-annual or annual period. And Panoma takes the view that Natural in effect and in fact is the purchaser of natural gas from the gas wells and not merely a purchaser of part only of the gas produced. [fol. 261] We think a consideration of all of the provisions of the sale contract is necessary to decide this controlling question. We think the narrow view of Natural was properly denied by Commission. It seems well demonstrated by the overall plan that Natural, if not in fact purchasing all of the gas located in Panoma's gas reserve, was at least purchasing all of the gas actually produced and run into the primary line of Natural and thence to its compressor

station. The temporary return of the gas to Panoma after Natural had compressed it was a custody or possession for a particular purpose, that is, to clean up or purify or process the rough gas for one purpose only, and that was to redeliver the gas in a stipulated condition to Natural. This processing may or may not have resulted in a profit to Panoma in the future. Nevertheless, that processing must be performed by Panoma. It is essential to Natural that it be done. The contract so provides, and in addition thereto the contract authorized Natural, in the event of unsatisfactory operation by Panoma, to take over the plant and operate it at the cost of Panoma plus 10% management expense.

Panoma produced the rough gas and delivered it to Natural. Thereafter when Panoma received back the gas and processed it and redelivered it to Natural, we regard that as merely a detail of the overall plan of processing the gas in selling and delivering it to Natural. We notice the fact that it was metered on this second delivery and that the expression was used that title passed at that point, but we do not consider that in any sense controlling, if it is even material in deciding the controlling question.

We deem it fair to assume, as apparently Commission assumed, that as between the contracting parties the recovery by Panoma of any salable products was to balance or offset the overall cost to Panoma of carrying out its obligation to Natural to place Natural's gas in proper condition to enter Natural's pipeline system and proceed to the burner tips of Natural's customers, with any loss in the processing to be suffered by Panoma, and any profit therein to offset the hazard of a loss, or the profit or chance of profit over one period to offset the loss or chance of loss during another period. Thus a similar situation would be created as if Natural, after first receiving the gas and compressing it, had employed or contracted with some other person to process its gas in exchange for the value of the extracted ingredients necessary to put the gas in the required condition for ultimate use by Natural.

The contract provides that Panoma desires to sell Natural all the gas underlying its entire gas reserves; and that Panoma has completed a number of gas wells and will drill

additional wells and install gathering lines, etc., and operate the entire production, all for the purpose of delivering gas to Natural; and that it is contemplated by both parties that all the gas underlying Panoma's acreage will be necessary to cover Natural's requirements and to fulfill the sale contract; and that all of the entire gas production of Panoma is [fol. 262] reserved for deliveries under the contract; and that all of Panoma's gas reserve is dedicated to the purpose of this sale contract; and that none of such gas shall be marketed to any other person; and reference is made to Natural's lien of dedication on Panoma's leaseholds themselves.

These contract provisions tend strongly to support Commission's findings, and to indicate that in truth and in fact Natural bought and contracted to buy all of Panoma's natural gas in the ground and to be produced from under this 78,000 acres, and that all provisions for drilling, producing, piping, compressing, processing, metering, etc., were merely details of delivery to Natural of that which it had already bought.

We therefore agree with the conclusion of Commission that Natural purchased and took natural gas from this reservoir at less than 7¢ per thousand cubic feet wellhead price. The extent thereof was in the amount stipulated and therefore found by Commission.

There was some contention on the part of Natural that it did not take "natural gas" from the structures and formations of the Guymon-Hugoton field because the gas it finally took and paid for was not in fact "natural gas". This contention was based on the facts above set out. No authority is cited to sustain the conclusion that natural gas produced from the earth and transported to consumers who use and burn it as such, is changed into something different because of the fact that after it is taken from the well it is cleaned up and processed before final delivery to the ultimate consumer. Furthermore, the contract specifically provides that "the term 'gas' wherever used herein, shall mean natural gas;" with further statement which makes the word "herein" refer to all provisions of the comprehensive contract.

On this overall contention Natural cites Phillips Pe-

troleum Co. v. State, included by consolidation with Cities Service Gas Co. v. Peerless Oil & Gas Co. 203 Okla. 35, 220 P. 2d 279; We have considered that cited authority, but do not find anything therein which might in any manner support the position and contention of Natural in this case. We deem it not necessary to further discuss the Phillips case.

In this case Natural was not a producer of natural gas, but it was a purchaser of natural gas produced by Panoma. The question here is whether Natural paid the necessary 7¢ per thousand cubic feet wellhead price. If Natural paid Panoma less than the proper 7¢ wellhead price, then there [fol. 263] was a violation of the price order which was made and became effective after the contract was made, and the price order would govern and control over the contract price of less than 7¢. Upon that point, as above stated, we have approved the conclusion of the Commission.

Natural next contends that the order of Commission requiring Natural to pay to Panoma the "back pay" sum on all gas taken before January 1, 1951, amounted to a judgment for that sum of money in favor of Natural and against Panoma, and that the Corporation Commission was not authorized to enter any such money judgment.

We do not agree that the order of Commission was in any sense the rendition of a money judgment against Natural. It was merely a calculation and statement of the amount Natural should have paid for the gas taken before January 1, 1951, to comply with the price fixing order. There was no controversy as to the contract between the parties, nor as to the amount of gas Natural had received from the wells of Panoma, nor as to the amount Natural had paid on the purchase price thereof. By express provision of the contract, as well as by law, the contract was modified by the price order and the minimum wellhead price of 7¢ became a part thereof and Natural was obligated by law to pay that price of 7¢. The calculation and statement of this "back pay" sum by Commission was merely a statement of the further sum Natural should pay to bring itself in full compliance with the minimum price requirement. Commission could not enforce it as a money judgment, however, this does not

mean that Commission is without any power to enforce compliance with its valid price fixing order. As in case of any other valid order, Commission may require compliance therewith by any other order within its authority, so in this case, while Commission could not require Natural to pay this sum, it could prohibit Natural from taking further gas until it brought itself into compliance with the effective price order by making the payment. If it were otherwise Commission would be powerless to take any steps to require compliance with its valid orders in the highly important program of conservation, and might as well not make them.

We hold that the order as to this "back pay" sum was within the authority of Commission. This conclusion finds support in our statements in Cities Service, supra.

Natural further contends that the orders here involved constitute an undue interference with Interstate Commerce, and that such orders are violative of the Commerce Clause of the Federal Constitution.

[fol. 264] We deny that contention on the authority of Cities Service case, supra. In that case it was contended that the action of the Corporation Commission in making and enforcing the specific wellhead price orders now involved in this case would so violate the Federal Constitution.

Speaking on that point the Supreme Court of the United States said: (95 L. ed. 161-162)

> "The Commerce Clause gives to Congress a power over interstate commerce which is both paramount and broad in scope. But due regard for state legislative functions has long required that this power be treated as not exclusive. (Citing authorities.) It is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce. (Citing authorities.) The only requirements consistently recognized have been that the regulation not discriminate against or place an embargo on interstate commerce, that it safeguard an obvious state interest, and that the local interest at stake outweigh whatever national interest there might

be in the prevention of state restrictions. Nor should we lightly translate the quiesence of federal power into an affirmation that the national interest lies in complete freedom from regulation. (Citing authorities.)

"That a legitimate local interest is at stake in this case is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources. The contention urged by appellant that a group of private producers and royalty owners derive substantial gain from the regulations does not contradict the established connection between the orders and a state-wide interest in conservation. (Citing authorities.)

"We recognize that there is also a strong national interest in natural gas problems. But it is far from clear that on balance such interest is harmed by the state regulations under attack here. Presumably all consumers, domestic and industrial alike, want to obtain natural gas as cheaply as possible. On the other hand, groups connected with the production and transportation of competing fuels complain of the competition of cheap gas. Moreover, the wellhead price of gas is but a fraction of the price paid by domestic con- [fol. 265] sumers at the burner-tip, so that the field price as herein set may have little or no effect on the domestic delivered price. Some industrial consumers, who get bargain rates on gas for 'inferior' uses, may suffer. But strong arguments have been made that the national interest lies in preserving this limited resource for domestic and industrial uses for which natural gas has no completely satisfactory substitute. (Citing authorities.) Insofar as conservation is concerned, the national interest and the interest of producing states may well tend to coincide. In any event, in a field of this complexity with such diverse interests involved, we cannot say that there is a clear national interest so harmed that the state price-fixing orders here employed fall within the ban of the Commerce Clause. (Citing authorities.)"

Since the Corporation Commission had authority to make price fixing orders without violating the federal constitution, then further orders within its authority designed to enforce compliance with such orders would likewise involve no violation of the federal constitution. To hold otherwise would bring about the result that the Corporation could and did make this specific price fixing order as applied to the Guymon-Hugoton field and the making of the order was not in violation of the Federal Constitution, but that subsequent valid orders directing compliance with the price fixing order would so violate the Federal Constitution. Such a conclusion, to say the least of it, would be most peculiar and quite illogical. Therefore, and upon the foregoing authorities we find no merit in this contention.

The orders appealed from are affirmed.

Johnson, V. C., J. and Corn, Davidson and Arnold, JJ. Concur; Halley, C. J. and O'Neal, Williams and Blackbird JJ. Dissent.

[fol. 266] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,203

NATURAL GAS PIPE LINE COMPANY OF AMERICA, Plaintiff in Error

vs.

PANOMA CORPORATION AND THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Defendants in Error

DISSENTING OPINION—September 15, 1953

Halley, C. J. (dissenting).

The majority opinion is affirming the Corporation Commission in this case is wrong. I am compelled to express a dissent.

On December 1, 1946, Natural Gas Pipe Line Company of America entered into a contract with D. D. Harrington and others who comprised a partnership doing business

under the firm name of Harrington and Marsh. Panoma Corporation acquired all the interest of the partnership in the contract.

Under the contract Natural was to purchase gas from the partnership and pay for it until the first day of July, 1951 at six cents (6¢) per thousand cubic feet. The unit volume for the measurement of gas delivered under the contract was one cubic foot of gas at a base temperature of sixty degrees Fahrenheit (60°F) and at an absolute pressure of sixteen and four-tenths (16.4) pounds per square inch.

[fol. 267] Panoma began the delivery of gas to Natural in August, 1948. This gas was paid for at a price basis of 5.12 cents per thousand cubic feet in accordance with the base provided by the Corporation Commission. From August 1948 to the end of 1950 Panoma received from Natural $3,634,523.74.

On December 9, 1946, the Corporation Commission issued an order which is as follows:

> "1. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price, at the wellhead of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.
>
> 2. This order shall be effective as of January 1, 1947."

Not until January 30, 1951, did Panoma take any action in regard to this matter when it filed an application with the Corporation Commission for a hearing. As a result the hearings had on this application the Corporation Commission made an order that Natural pay Panoma the difference between the amount it had heretofore paid for such gas delivered to it by Panoma and the amount which the Commission said it should have paid for the gas herein determined, computed at seven cents (7¢) per thousand cubic feet measured at a pressure base of 14.65 pounds per square inch absolute and if Natural did not pay it Panoma

should stop delivering gas to Natural. From this order Natural properly appealed.

The evidence taken at the hearing showed that Panoma had received from the sale of extracted liquids the sum of $2,968,405.33 in the period August 1948 to December 31, 1951. With the $3,634,523.74 received over the same period [fol. 268] from Natural and the amount received from sale of liquids Panoma was paid a total of $6,602,929.07 or $.09301 per thousand cubic feet on 14.65 pressure base for all the gas disposed of.

The order of December 9, 1946 fixing the price that should be paid at the wellhead was made as if the producer of the gas was selling at the wellhead. In the instant case the producer, Panoma, was not selling at the wellhead.

At no time did Natural buy the raw gas (spoken of in the majority opinion as rough gas at the wellhead). The contract stated that title to the gas passed to Natural at the meter station and at this point the hydrocarbons had been extracted.

The contract in Section One, Article V, specifically provided that Panoma reserved the right to extract from the gas nitrogen, helium, natural gasoline, propane and other hydrocarbons other than methane, together with any methane necessarily removed from the gas in the process of recovering such other constituents.

The Corporation Commission only has the right to fix the price of gas as a conservation measure under the theory that if no price is fixed that the gas might be consumed in producing cheaper products and full benefit would not be received from the gas. We held that this right was given by implication in the 1915 Conservation Act, Cities Service Gas Company v. Peerless Oil and Gas Company, et al, 203 Okla. 35, 220 P. 2d 279. The order did not attempt to guarantee the producer a profit of 7¢ a thousand and it had no right to attempt to do so. It only said it should not be sold for less than 7¢ per thousand at the wellhead. In my [fol. 269] opinion under the evidence and the order of the Commission, Panoma received more than the 7¢ required and for that reason Natural owes Panoma nothing. There was no evidence that there was any waste in the use to which this gas was put.

If Natural is to be charged with the payment of 7¢ per thousand for gas at the wellhead then it should be credited with everything that was taken out of the gas as if it was done before it reached the wellhead since Natural only received dehydrated gas. It is no concern of the Corporation Commission as to what price is paid the producter. Their concern is with conservation and to see that the gas is not used in a manner whereby a natural resource would be dissipated without the State receiving the proper benefit.

This Court should not say that a purchaser of dehydrated gas which has constituents extracted to the extent of 45% of the value of the whole should be burdened with paying a fixed wellhead price without receiving any credit for the by-products. The order of the Corporation Commission of December 9, 1946 was not made with the contract in this case in mind. Neither was the contract written with such an order in mind. The order and contract must be considered with the point in mind that the Commission was not guaranteeing a profit to the producer but was endeavoring so as to conserve the gas in this State in this particular area.

I am also of the opinion that the Corporation Commission had no authority to tell Panoma that it must not furnish Natural any more gas unless Natural paid them this $1,300,000. This was a matter for the courts. [fol. 270] Our Constitution and Statutes at no place provide for the Corporation Commission taking the action it has in this case by saying to a purchaser of the gas you pay the producer $1,334,960.50 or else the source of supply of gas for many of your customers will be chopped off. The Natural had a binding contract with Panoma through its predecessors and that contract should be interpreted by the courts and not by a regulatory body. In Southwestern Light and Power Company v. Elk City, 188 Okla. 450, 111 P.2d 820, we said that the Corporation Commission is without jurisdiction or power to enter or enforce a judgment or order adjudicating the claimed contracted rights of a consumer of electric current under a written contract with a utility to receive a stated reduction of rate and refund of money for electric current. The case at bar presents just as much the construction of contractural rights as in that

case. I think that in this case as there the rights of the parties should be determined in courts of general jurisdiction. It is not a job for laymen.

The Corporation Commission has no right to tell the producer he could not sell constituents of raw gas separately. Strictly speacking all the order did was to say that when gas is sold at the wellhead it must bring not less than 7¢ per thousand cubic feet. If the producer desired to retain for his use and profit certain constituents he had a perfect right to do so and as long as there was a substantial compliance with the Commission order it should be sufficient to satisfy the Commission. This was its conclusion [fol. 271] as to the right of the Phillips Petroleum Company when it disposed of certain elements of gas separately. In that instance Phillips received 6.9855 cents per thousand cubic feet from all the constituents of the gas.

This Court is given the authority by Section 20, Article IX of our Constitution to exercise its own independent judgment as to both the law and the facts of an appeal involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of this State. Such assertion is made in this case. I reiterate that when it appears from the testimony what the producer has received over nine cents for his gas when he had only to receive seven and when under the plain terms of the contract the producer has retained for his own use and benefit certain elements of the gas from which he gets 45% of the total value of all the gas after it has been through the dehydration plant it is contrary to fundamental conceptions of justice to say that the buyer of the dehydrated gas shall pay 7¢ for the raw gas and not receive credit for the profit received from the other constituents of the gas. He did not intend to buy them. The producer did not intend to sell the hydrocarbons. The Corporation Commission was without authority to make a new contract for the parties.

In this case Natural complied with its part of the contract. It did not know what Panoma was receiving for the hydrocarbons that it retained. It had the right to rely on Panoma to comply with the Commission's rules as its contract with Panoma had been in existence four years

[fol. 272] and two months when Panoma's application was filed with the Commission. Furthermore it had been two years and a half before any action was taken by Panoma to question the position of Natural.

Neither the Constitution, Acts of our Legislature or any decision of this Court provide a penalty for purchasing residue or dehydrated gas at any price. Since the Commission has not provided for this situation by its orders, it cannot assess such a penalty after the taking. Such action on its part is clearly a violation of the due process clause of both the Federal and State Constitutions.

The producer cannot "have his cake and eat it too." If he is to sell his gas to the Pipe Line Company at seven cents then he must of necessity account to the buyer for all the by-products or hydrocarbons. Under no interpretation of the contract can Panoma be the employee of Natural. In no way that you can analyze this case can the order of the Corporation Commission be sustained.

I respectfully dissent.

[fol. 273] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

PETITION FOR REHEARING AND SUPPORTING BRIEF—Filed October 30, 1953

Comes now Natural Gas Pipeline Company of America, plaintiff in error, hereinafter called Natural, and shows to the Court that on the 15th day of September, 1953, an opinion was filed in this cause affirming an order of the Corporation Commission of the State of Oklahoma, hereinafter called Commission, which required Natural to pay to Panoma Corporation, hereinafter called Panoma, more than [fol. 274] $1,300,000.00 for past deliveries of residue gas[1]

[1] By residue gas as used herein is meant the constituent of the natural gas produced from the wells (referred to in the Court's opinion as "rough" gas) which remains after the rough gas has been processed in a gasoline plant and valuable constituents removed in liquid form.

as a condition for the further delivery of such gas under a contract between Panoma and Natural. The Commission further ordered Natural to pay to Panoma for residue gas the same price which the Commission fixed for natural gas (with all constituents present) at the wellhead in the Guymon-Hugoton Field. The opinion reflects a grave misunderstanding of the undisputed facts involved. As a result of such misunderstanding of the undisputed facts, the Court has misinterpreted the contract, as a matter of law. A rehearing should be granted for the following reasons:

I

The Court's Opinion is based upon the erroneous belief that natural gas (rough gas) was delivered by Panoma to Natural at the wells

Neither Panoma nor the Commission has ever contended that there was a delivery of gas in any form to Natural until it had first been (1) produced by Panoma (117 wells had been drilled by Panoma on the dedicated acreage at the time of the hearing (R. 40). Some of those wells were as much as 15 or 20 miles from the compressor station (R. 210)), (2) gathered by Panoma through its own gathering lines, and (3) transported by Panoma from its wells to Natural's compressor station. Natural had no "initial [fol. 275] or primary pipe" between the wells and its compressor station into which "rough gas" could have been delivered. All lines from the wells to the compressor station were owned by Panoma and its president so testified (R. 52). The Commission found that the gas "was delivered, but not metered or measured at a compressor station owned and operated by Natural Gas Pipeline Company of America." Panoma's counsel stated before the Commission, "It's our position that the gas is delivered to them at the compressor station * * *" (R. 52). The testimony of Panoma's president clearly shows that Natural's compressor station was the point of first delivery to Natural of gas and that this delivery was of temporary custody only and for a special purpose (R. 47). There was, therefore, no delivery, as the opinion recites, of "gas direct from the wells to Natural's initial or primary pipe."

II

The Opinion overlooks positive and undisputed proof that Panoma, from the utilization and sale of its natural gas, realizes 7.04 cents per m.c.f. after allowance is made for all direct costs and plant depreciation aggregating $1,602,280.04. Of this amount $622,366.97 represents depreciation

The opinion clearly reflects a mistaken belief that Natural, in its argument respecting Panoma's realization from the sale of the constituents of the "rough gas", has not taken into account plant costs or depreciation. It is stated in the opinion that:

> [fol. 276] "The calculation must necessarily include the cost of operating its processing plant plus some contribution to the cost of construction of the plant or to depreciation, which is not included in Natural's calculation and argument."

Exhibit 14 (R. 234) prepared by Panoma's accountants shows Panoma's receipts from "total residue and products" after deducting "total cost", including depreciation, to be 7.04¢ per m.c.f. Natural, in its reply to the "Printed Argument" of Panoma and the Commission, discussed the exhibit at length (Natural's Reply to Printed Argument, pages 14-17).

III

The Commission in promulgating the Order—called by the Court a "back pay" order—arrogated unto itself (and this Court has approved such arrogation), judicial power nowhere conferred upon it by the Constitution or Statutes of the State of Oklahoma.

The Commission, as the Court points out:

> "Ordered in effect that Natural should pay for all gas received on and after January 1, 1951, at the sum and rate of seven cents per thousand cubic feet at the wellhead."

Furthermore, the order contained provisions clearly designed to bring about its enforcement as to past transac-

tions. Not only did it direct Natural to pay the sum of more than $1,300,000.00 within 20 days, but provided that upon Natural's failure so to do Panoma should cease deliveries of gas to it. Such an order, adjudging as it does that one party to a contract is indebted to another, directing the payment of the amount so determined and contain-
[fol. 277] ing coercive provisions for enforcement, is in truth and in fact a money judgment, for the rendition of which the Commission has no constitutional or statutory power.

IV

The Commission's Order discriminates against Natural and is therefore violative of Article 2, Sections 2, 7 and 15, and Article 5, Section 59 of the Oklahoma Constitution and of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

The order of the Commission and the opinion of this Court approving it clearly discriminate against Natural by refusing to apply to Natural the principles applied to Phillips in the Commission's Order No. 19702. Further discrimination results from the imposition upon Natural of the entire burden of the price-fixing order without imposing any upon those who purchase the extracted liquids.

V

The Order is violative of the Commerce Clause of the Constitution of the United States whether Natural purchases residue gas at the outlet of the gasoline plant or purchases "rough gas" at the well.

That Cities Service Gas Company v. Peerless Oil & Gas Co., 340 U.S. 179, (on the strength of which the Court brushes aside Natural's contention that the order violates the Interstate Commerce Clause) is applicable only in a narrow and restricted field has been stressed by the decisions of two United States Courts of Appeal rendered since
[fol. 278] the briefs were filed in this cause. State of Wisconsin v. Federal Power Commission (not yet reported); State Corporation Commission v. Federal Power Commission (not yet reported). Under these decisions the Cities

Service-Peerless case is here "irrelevant." Moreover, the facts as to interstate commerce are different here than those involved in the Cities Service case.

Wherefore, Natural prays that a rehearing be granted, that the opinion be withdrawn, that the order of the Commission be in all things reversed, and that judgment be rendered for Natural.

Respectfully submitted, S. A. L. Morgan, Warren T. Spies, D. H. Culton, Coleman Hayes, Attorneys for Plaintiff in Error.

[fol. 279] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ORDER DENYING PETITION FOR REHEARING—March 23, 1954

The clerk is hereby directed to enter the following orders:

35,203—Natural Gas Pipe Line Co. of America v. Panoma Corp. et al. Petition for rehearing and motion for oral argument denied.

Harry L. S. Halley, Chief Justice.

[fol. 280] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ORDER DENYING LEAVE TO FILE SECOND REHEARING—May 25, 1954

The clerk is hereby directed to enter the following orders:

35,203—Natural Gas Pipeline Co. of America v. Panoma Corporation, et al. Application for leave to file Second Petition for Rehearing denied.

Harry L. S. Halley, Chief Justice.

[fol. 281] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted.]

PETITION FOR APPEAL—Filed June 15, 1954

Considering itself aggrieved by the final opinion and judgment of this Court entered September 15, 1953, following which this Court denied its Petition for Rehearing, Natural Gas Pipeline Company of America, Plaintiff in Error herein, does hereby pray that an appeal be allowed to the Supreme Court of the United States from said final opinion and judgment and from each and every part thereof; that said judgment be stayed pending final disposition of this appeal; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by said Plaintiff in Error; and that the material parts of the record, proceedings and papers upon which said final opinion, judgment and decree was based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, D. H. Colton, Coleman Hayes, Clarence H. Ross, Warren T. Spies, C. C. McDugald, S. A. L. Morgan, Counsel for Plaintiff in Error.

[fols. 282-349] [File endorsement omitted.]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted.]

ORDER ALLOWING APPEAL—June 15, 1954

Natural Gas Pipeline Company of America having filed its petition praying for an appeal to the Supreme Court of the United States from the final opinion, judgment and decree of this Court entered on September 15, 1953, and from each and every part thereof, and having presented its assignment of errors and prayer for reversal and its

statement as to the juridiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for

It is further ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of $2500, with good and sufficient surety, and shall be conditioned as may be required by law, and that the judgment be suspended and stayed until the termination of this appeal; and that the Clerk of this Court is directed to prepare and forward to the Clerk of the Supreme Court of the United States a copy of such portions of the record as shall be designated by the parties.

It is further ordered that citation shall issue in accordance with law.

Harry L. S. Halley, Chief Justice.

Dated: June 15th, 1954.

[fol. 350] Statement Required by Paragraph 2 of Rule 12 of the Rules of the Supreme Court of the United States—Omitted in printing.

[fols. 351-352] Bond on Appeal for $2500.00 approved and filed June 15, 1954 omitted in printing.

[fol. 353] Citation in usual form omitted in printing.

[fol. 354] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted.]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed June 15, 1954

Natural Gas Pipeline Company of America, appellant in the above entitled cause, in connection with its appeal to the Supreme Court of the United States, hereby files the following assignment of errors upon which it will rely in its prosecution of said appeal from the final judgment of the Supreme Court of Oklahoma entered on September 15, 1953.

1

The Supreme Court of Oklahoma erred in failing to hold that the commodity purchased by Natural from Panoma Corporation is residue gas, purchased at the outlet of a gasoline plant, after the natural gas of which the residue gas was originally a constituent has been produced, gathered, and processed through a gasoline plant; that the residue gas is purchased by Natural, expressly and exclusively, for immediate transportation to other states; and, therefore, that Order No. 19,514, as applied to Natural by Order No. 24,745, is violative of the Commerce Clause, Section 8, Article I, Constitution of the United States.

[fol. 355] 2

The Supreme Court of Oklahoma erred in failing to hold that basic order No. 19,514 of the Corporation Commission of Oklahoma, in its operation and effect as applied to Natural by Order No. 24,745, is violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, in this: Order No. 19,514 was so interpreted in the Commission's Order No. 19,702, as to permit the production of natural gas by Phillips Petroleum Company, when by the sale and utilization of the constituents of its gas it received a total of approximately only 7¢ per m.c.f., to-wit, 6.9855¢ per m.c.f., but in Order

No. 24,745, the Commission has interpreted Order No. 19,514 as prohibiting Panoma from producing its natural gas unless Panoma receives from the constitutents of its gas sold separately a total of 11.181¢ per m.c.f.

Such Order 19,514, together with the interpretative Orders 19,702 and 24,745—all considered together, operate to impose unequal burdens on purchasers from producers under similar circumstances to the detriment of Natural in that Panhandle Eastern Pipe Line Company may lawfully purchase residue gas from Phillips at 4.1716¢ when Phillips realizes from all the constituents of its raw gas the sum of 6.9855¢ per m.c.f. but Natural cannot purchase the same commodity, residue gas, from Panoma, at 5.359¢ per m.c.f. (the contract price) unless Panoma receives from all the constitutents of its raw gas the sum of 11.181¢ per m.c.f.

3

The Supreme Court of Oklahoma erred in failing to find that the Corporation Commisison of Oklahoma, having in Order 19,702 so applied Order No. 19,514 as to hold that Phillips in obtaining 6.9855¢ gross per m.c.f. for the constituents of its gas complies with Order No. 19,514, and [fol. 356] having in Order 24, 745 so applied Order No. 19,514 so as to hold that Panoma, though obtaining 9.301¢ gross and 7.04¢ net for the constitutents of its gas, violates Order No. 19,514, has made unjust and unreasonable distinctions between persons in similar circumstances, and in failing to hold that the Commission's such discriminatory enforcement of Order No. 19,514 constitutes a denial to appellant of equal justice within the prohibition of the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States in that Panhandle Eastern can continue under Order No. 19,514 as interpreted by Order No. 19,702 to purchase residue gas from Phillips under its contract at 4.1716¢ per m.c.f. but Natural cannot, under Order No. 19,514 as interpreted and applied by Order No. 24,745, purchase from Panoma under its contract residue gas at 5.359¢ per m.c.f.

4

The Supreme Court of Oklahoma erred in failing to hold: (1) that prior to the entry of Order No. 24,745 the Corporation Commission of Oklahoma had promulgated no order fixing the price of residue gas but had held in its interpretative Order 19,702 (issued in the same proceeding as that in which Order 19,514 was issued) that Phillips, selling its extracted liquids for 2.8138¢ and its residue for 4.1716¢,—a total of 6.9855¢ per m.c.f.—was complying with the requirements of Order No. 19,514; (2) that, since during the period through December 1950, Panoma had realized from the sale of its extracted liquids 4.181¢ and from the sale of residue gas 5.12¢—a total of 9.301¢ per m.c.f., Panoma was complying with Order No. 19,514 as interpreted and applied by Order No. 19,702; (3) that until the Commission should issue an order expressly fixing the price for residue gas, or otherwise interpret Order No. 19,514, Natural could lawfully continue to purchase residue gas from Panoma at the [fol. 357] contract price; and (4) therefore, that even if Order No. 24,745 were lawful as applied to future purchases of gas by Natural from Panoma, that order was violative of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States insofar as it was retrospective in nature, requiring Natural, as a condition to continued deliveries of gas under the contract, to pay Panoma an additional sum of more than $1,300,000 because of prior purchases.

5

The Supreme Court of Oklahoma erred in assuming, notwithstanding the clear and unambiguous provisions of the contract and the clear and undisputed evidence to the contrary, that Natural purchased from Panoma raw natural gas, either at the wellhead or in the producing formations (thereby avoiding a full discussion of the constitutional questions raised by Natural) since the evidence shows conclusively that Natural purchased only residue gas delivered at Natural's metering station, other than the insignificant quantities of raw gas purchased for fuel in Natural's compressor station.

6

The Supreme Court of Oklahoma erred in failing to hold that Natural incurred no liability to Panoma under Order No. 19,514 because of the receipt by Natural of the custody of Panoma's raw gas at Natural's compressor station since that order imposed no liability on those taking such custody; and in failing to hold that Order No. 24,745 was, therefore, violative of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, appellant Natural Gas Pipeline Company of America prays that the final judgment of the Supreme Court of Oklahoma affirming the order of the Oklahoma Corporation Commission be reversed, and for such other [fol. 358] relief as the Court may deem fit and proper.

Respectfully submitted, D. H. Culton, Coleman Hayes, Clarence H. Ross, Charles G. McDugald, Warren T. Spies, S. A. L. Morgan, Counsel for Appellant, Natural Gas Pipeline Company of America.

Filed June 15, 1954.

[fol. 359] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

APPLICATION FOR STAY OF ENFORCEMENT OF OPINION AND JUDGMENT—Filed June 15, 1954

Comes now Natural Gas Pipeline Company of America, plaintiff in error herein, and shows to the Court that on the 25th day of May, 1954, its application for leave to file second petition for rehearing in this cause was denied; that plaintiff in error intends to appeal to the Supreme Court of the United States from the opinion and judgment of this Court, and desires that the enforcement of the order of the Corporation Commission from which the appeal to this Court was taken and the enforcement of the opinion and

judgment affirming said order be stayed pending the taking of said appeal to the Supreme Court of the United States and disposition thereof by said Court.

Plaintiff in error further shows that there is on file in this Court as a part of the record in this cause a supersedeas bond with good and sufficient surety in the amount of $1,500,000.00; that said bond is adequate and sufficient to supersede and stay enforcement proceedings pending said appeal, and said bond is herewith tendered as a part of this application.

Wherefore, plaintiff in error prays that the enforcement of said order of the Corporation Commission and the opinion and judgment of this Court be stayed, suspended and [fol. 360] superseded pending said appeal to the Supreme Court of the United States and disposition thereof by such Court.

Dated this 15th day of June, 1954.

Natural Gas Pipeline Company of America, By Coleman Hayes, One of its Attorneys.

Filed June 15, 1954.

[fol. 361] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER STAYING ENFORCEMENT OF ORDER, OPINION AND JUDGMENT—June 15, 1954

On this 15th day of June, 1954, it appearing from the application of Natural Gas Pipeline Company of America, plaintiff in error, that said plaintiff in error intends to appeal from the opinion and judgment of this Court in this cause to the Supreme Court of the United States and that said plaintiff in error desires a stay of the enforcement of an order of the Corporation Commission from which the appeal to this Court was taken and the opinion and judgment of this Court affirming such order, and it appearing to the Court that there is on file as a part of the record in

this cause a supersedeas bond with good and sufficient surety in which the State of Oklahoma and/or Panoma Corporation, defendant in error, are obligees, in the amount of $1,500,000.00, and that said bond constitutes adequate and sufficient security and protection for said obligees and that no other or further supersedeas is necessary or required;

Now, therefore, it is ordered:

That enforcement of the order of the Corporation Commission from which the appeal to this Court was taken and [fols. 362-374] the enforcement of the opinion and judgment of this Court affirming said order be and the same are hereby stayed pending the appeal by plaintiff in error to the Supreme Court of the United States and the disposition of said appeal by that court.

Harry L. S. Halley, Chief Justice of the Supreme Court of Oklahoma.

[fol. 375] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 35,203

[Title omitted]

PRAECIPE—Filed June 25, 1954

To the Clerk of This Court:

You will please prepare a transcript of the record in the above entitled cause to be transmitted to the Clerk of the Supreme Court of the United States, and include in such transcript the following:

1. Record of Testimony and Proceedings before Oklahoma Corporation Commission.
2. Petition in Error.
3. Opinion of affirmance of the Supreme Court of Oklahoma, including dissenting opinion.
4. Petition for Rehearing, excluding the argument in support thereof.

5. Order of the Supreme Court of Oklahoma denying the Application for Rehearing.
6. Petition for Appeal.
7. Order allowing Appeal.
8. Application for Order of Supersedeas.
9. Order of Supersedeas.
10. Citation on Appeal.
11. Assignment of Errors and Prayer for Reversal.
12. Statement as to Jurisdiction.
13. Statement by Plaintiff in Error directing Defendants' in Error attention to Paragraph 2 of Rule 12 of the Revised Rules of the Supreme Court of the United States.
[fols. 376-377] 14. Appeal Bond.
15. This Praecipe.
16. Acknowledgment by Defendants in Error of the service upon them of the instruments, or copies thereof, described in Items 5, 6, 7, 9, 10, 11, 12 and 13 of this Praecipe.

D. H. Culton, Coleman Hayes, Clarence H. Ross, Charles C. McDugald, Warren T. Spies, S. A. L. Morgan, Counsel for Plaintiff in Error.

Dated: June 24th, 1954.

Service of the foregoing Praecipe is acknowledged this June 24th, 1954.

T. Murray Robinson, Counsel for Panoma Corporation.

Floyd Green, Counsel for Corporation Commission of Oklahoma.

[fol. 378] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 379] IN SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1954

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA, Appellant

vs.

PANOMA CORPORATION AND THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

ORDER NOTING PROBABLE JURISDICTION—November 8, 1954

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

November 8, 1954.

(8832)